

FIFTY-EIGHTH DAY

(Friday, May 15, 1987)

The Senate met at 10:00 a.m., pursuant to adjournment and was called to order by Senator Brooks.

The roll was called and the following Senators were present: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejada, Uribe, Washington, Whitmire, Zaffirini.

Absent-excused: Truan.

A quorum was announced present.

The Reverend Chris Steele, Chaplain, St. Luke's Hospital and Texas Heart Institute of Houston, offered the invocation as follows:

O God of unchangeable power and eternal might, look down upon this assembly of elected leaders who speak where many listen, who write what many read. Enable them to see and know that in all the cares and occupations of their labors those things which were cast down are being raised up and those things which have grown old are being made new and that all things are being brought to their perfection, not by our wills, but by Your will; not by our strength, but by Your eternal power. Amen.

On motion of Senator Harris and by unanimous consent, the reading of the Journal of the proceedings of yesterday, was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

Senator Truan was granted leave of absence for today on account of illness on motion of Senator Glasgow.

REPORTS OF STANDING COMMITTEES

Senator Edwards, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.S.B. 396

Senator Brooks submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 235

C.S.S.B. 1498

Senator Harris submitted the following report for the Committee on Economic Development:

C.S.S.B. 734

C.S.S.B. 87

H.B. 1678

C.S.H.B. 1977

C.S.H.B. 1653

H.B. 258 (Amended)

C.S.H.B. 1978

H.B. 1963

C.S.H.B. 1953

Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

C.S.H.B. 782

C.S.H.B. 339

C.S.S.B. 1480

C.S.H.B. 991

H.B. 570

Senator Caperton submitted the following report for the Committee on Jurisprudence:

C.S.S.B. 1045

MESSAGE FROM THE HOUSE

House Chamber
May 15, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 1646, Relating to the regulation of overweight, overlength, or oversized vehicles, providing a criminal penalty.

H.B. 1227, Relating to the allowance of attorney's fees in connection with dismissal of a condemnation proceeding.

H.B. 667, Relating to the authority of the State Board of Insurance to verify that insurers writing workers' compensation insurance are providing accident prevention services to their policyholders.

H.B. 1154, Relating to the establishment of a support program to assist mentally or developmentally disabled persons and their families; providing a penalty.

H.B. 2025, Relating to the powers and duties of the Sunset Advisory Commission and the review of certain agencies by that commission.

H.B. 313, Relating to the evaluation of certain criminal defendants to determine a need for drug or alcohol counseling and to the cost of the evaluation.

H.B. 587, Relating to the punishment for the offense of criminal mischief if the property damaged, destroyed, or tampered with belongs to the State and the actor commits the offense while confined in the Texas Department of Corrections.

H.B. 335, Relating to the offense of burglary of a habitation.

H.B. 1870, Relating to the validation of county time warrants and related proceedings and acts.

H.B. 1919, Relating to the creation of a Fire Ant Advisory Board and an award program for research in the field of fire ant control and eradication.

H.B. 2031, Relating to the length of time a hospital, hospital authority, or hospital district is required to retain medical records.

H.B. 2119, Relating to the authority of a municipality to contract for jail facilities and the operation of those facilities.

H.B. 2553, Relating to public notice of information regarding the revenue and financial condition of political subdivisions imposing property taxes.

H.B. 2213, Relating to the exemption from ad valorem taxation of certain property of a religious organization.

H.B. 959, Relating to salaries of appellate and district court justices and judges.

H.B. 2224, Relating to the purchase or lease of telecommunications items and automated information items for State governmental bodies.

H.B. 2511, Relating to the provision of telecommunications services to State government.

H.B. 824, Relating to residency requirements for municipal employees.

H.B. 2193, Relating to adoption of the Uniform Fraudulent Transfer Act, governing fraudulent transfers of assets and fraudulent obligations.

H.B. 1281, Relating to property taxes imposed by a school district in a reinvestment zone established for tax increment financing or property tax abatement.

H.B. 1169, Relating to the acquisition of existing buildings to meet office space needs of State agencies.

S.C.R. 121, Recalling **H.B. 747** from the Governor for correction.

H.C.R. 101, Congratulating Michael Harris of KCOH-AM on being named Houston's "Top Jock" by The Houston Chronicle.

H.C.R. 153, Commending White Diamond Enterprises on developing The Worldwide Texas Wagon Train.

H.C.R. 166, Commending the academic decathlon teams of John Foster Dulles High School, William P. Clements, Jr., High School, and J. J. Pierce High School.

H.C.R. 170, Commending Sheila Adams and Angela Kaye Brown for their heroism.

H.C.R. 178, Designating the Cleburne High School band as the Official Goodwill Representative of Texas.

H.C.R. 179, Congratulating the Cleburne boys' basketball team for making it to the State 4-A Championship game.

H.C.R. 186, Honoring former State Representative Bill Blythe for his work on the State Pension Review Board.

H.C.R. 200, Honoring the Texas Employees Retirement Association.

H.C.R. 198, In memory of Clyde H. Wells, who served on The Texas A&M University Board of Regents for 24 years.

The House has granted the request of the Senate for the appointment of a Conference Committee on S.B. 523. House Conferees: Taylor, Chairman; Waldrop, Denton, Price and Yost.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE BILLS AND RESOLUTION ON FIRST READING

On motion of Senator Washington and by unanimous consent, the following bills and resolution were introduced, read first time and referred to the Committee indicated:

S.C.R. 123 by Washington Health and Human Services
Establishing the Transition Services Task Force.

S.B. 1525 by Sims Natural Resources
Relating to the creation, administration, powers, duties, operations, fiscal procedures, annexation authority, bond and taxing authority, and the exercise of eminent domain by the Lipan-Kickapoo Water Conservation District.

S.B. 1526 by Edwards State Affairs
Relating to the creation, organization, powers, duties and financing of authorities or entities related to the establishment, construction, operation, maintenance and enhancement of a superconducting supercollider facility; providing for the powers, duties and financing of certain entities which contract with respect to a superconducting super collider facility; providing a criminal penalty; and granting the power of eminent domain.

S.B. 1527 by Washington Health and Human Services
Relating to signs posted in food service establishments depicting the Heimlich maneuver to dislodge food from a choking person.

S.B. 1528 by Barrientos Economic Development
Relating to a foreign trade zone in San Marcos.

S.B. 1529 by Henderson Natural Resources
Relating to the authority of the Texas Water Commission to authorize certain districts to proceed under federal bankruptcy law.

S.B. 1530 by Henderson, Jones, Montford, Sims Finance
Relating to exempting oil produced from marginally economic leases and gas produced from marginally economic wells from production taxes.

S.B. 1531 by Jones Finance
Relating to raising revenue to support local government, and to the imposition, application, rates, collection, administration and enforcement of, limitations on, and the use of revenue from, various state authorized taxes.

S.B. 1532 by Jones Finance
Relating to the uses of local hotel occupancy tax revenue.

S.B. 1533 by Jones Finance
Relating to the proration of state aid to school districts.

CO-AUTHOR OF SENATE CONCURRENT RESOLUTION 103

On motion of Senator Parmer and by unanimous consent, Senator Washington will be shown as Co-author of S.C.R. 103.

CO-AUTHORS OF SENATE BILL 1259

On motion of Senator Edwards and by unanimous consent, Senators Sarpalius and Sims will be shown as Co-authors of S.B. 1259.

CO-AUTHORS OF SENATE BILL 1530

On motion of Senator Henderson and by unanimous consent, Senators Jones, Sims and Montford will be shown as Co-authors of S.B. 1530.

CO-SPONSOR OF HOUSE BILL 161

On motion of Senator Krier and by unanimous consent, Senator Zaffirini will be shown as Co-sponsor of H.B. 161.

SENATE BILL 478 WITH HOUSE AMENDMENTS

Senator Leedom called S.B. 478 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - McKinney

Amend S.B. 478 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Subsection (a), Section 4.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) All public grounds belonging to the State of Texas under the charge and control of the commission may be leased for agricultural or commercial purposes. Lease proposals shall be advertised once a week for four consecutive weeks in at least two newspapers, one of which shall be published in the city where the property is located, or the nearest daily paper thereto, and the other in some paper with state-wide circulation. Thirty days prior to executing a lease under this section, the lease proposal shall be sent to the asset management division of the General Land Office and during the thirty day period the asset management division of the General Land Office shall submit written comments to the commission concerning the lease. Comments submitted by the asset management division of the General Land Office shall be considered by the commission prior to executing the lease. Each lease shall be subject to the approval of the attorney general of Texas, both as to substance and as to form. The money derived from the lease of such property, less the expense for advertising and leasing, shall be deposited in the state treasury to the credit of the General Revenue Fund except that if land leased belongs to any eleemosynary institution, that money must be deposited to the credit of said institution in the same manner that the special fund is now deposited or may hereafter be ordered deposited by the legislature.

SECTION 2. Subsection (b), Section 4.15, State Purchasing and General Services Act, as amended (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In a state-owned building that is under the commission's control and that is used primarily for office space or vehicle parking for the state government, the commission may lease at fair market value an amount of space to private tenants for commercial, cultural, educational, or recreational activities. However, 30 days before executing a lease under this section, the commission must submit a copy of the lease to the asset management division of the General Land Office. During this 30-day period the asset management division of the General Land Office shall submit written comments to the commission concerning the lease. Comments

submitted by the asset management division of the General Land Office shall be considered by the commission prior to executing the lease. Under this section the commission may not lease any space to a private tenant for use as private office space unless the private office space is related and incidental to another commercial, cultural, educational, or recreational activity of the tenant in the building.

SECTION 3. Section 5.11, State Purchasing and General Services Act, as amended (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.11. GRANT OF EASEMENTS AND RIGHTS-OF-WAY. The commission is authorized and empowered to grant such permanent and temporary easements and rights-of-way over and on lands of any state agency on any project administered by the commission as shall be necessary to insure the efficient and expeditious construction, improvement, renovation, use, and operation of such state agency project building or facility; provided, however, any easement or right-of-way which may extend beyond the period of construction must be submitted to the asset management division of the General Land Office for written comment 30 days prior to its being granted by the commission. Comments submitted by the asset management division of the General Land Office shall be considered by the commission prior to granting the easement or right-of-way.

SECTION 4. Section 51.121, Natural Resources Code, as amended, is amended by adding Subsection (d) to read as follows:

(d) In leases granted under this subchapter that are for terms of 20 years or more, the commissioner may grant the lessee a preference right to purchase the leased premises. In order to grant this preference right, the commissioner must include such a provision in the lease. The provision may provide that the preference right to purchase may be exercised at any time during the term of the lease. If the commissioner does include the preference right to purchase in the lease, the lessee shall have a preference right to purchase the leased premises before the leased premises are made available for sale to any other person. All sales under this subsection must be for not less than fair market value as determined by General Land Office appraisers and under any other terms and conditions that the commissioner deems to be in the best interest of the state. The preference right to purchase granted under this subsection is superior to any other preference right to purchase granted under any other section of this code or under any other law. Nothing in this subsection shall be construed to allow the commissioner to grant a preference right to purchase submerged land.

SECTION 5. Subsection (b), Section 51.056, Natural Resources Code, as amended, is amended to read as follows:

(b) Each application shall:

- (1) designate the land to be purchased;
- (2) state the bid offered;
- (3) include an affidavit disclosing the names of all persons or entities

[that the purchaser is purchasing the land for himself and that no other person or corporation is] either directly or indirectly interested in the purchase of the land.

SECTION 6. Subchapter C, Chapter 31, Natural Resources Code, as amended, is amended by adding Section 31.065 to read as follows:

Sec. 31.065. AUTHORITY TO ACCEPT GIFTS, DEVISES, TRUSTS, AND BEQUESTS. (a) In the absence of any law to the contrary, the commissioner may, if he determines it to be in the best interest of the state, accept gifts, devises, or bequests, either absolutely or in trust, of money or real or personal property on behalf of the state. Real property so acquired by the state becomes public free school land unless the person making the gift, devise, or bequest provides that the real property is to be possessed, administered, or used by a particular state agency, board, commission, department, or other particular state entity.

(b) Under Subsection (a) of this section, the commissioner may accept a gift, devise, or bequest even if it is encumbered, restricted, or subject to a beneficial interest of private persons or corporations as long as any current or future use or interest in the gift, devise, or bequest is for the benefit of the state.

(c) If the commissioner determines that the real property acquired by the state by gift, devise, or bequest is not suitable for the purpose for which the gift, devise, or bequest was originally made, the commissioner together with the agency, board, commission, department, or other state entity designated to possess, administer, or use the real property may exchange the property for property that is suitable for such purpose.

SECTION 7. Section 51.052, Natural Resources Code, as amended, is amended by adding Subsection (g) to read as follows:

(g) The board may sell or exchange any interest in the surface estate of public school land directly to any state or federal agency, board, or commission or any political subdivision of this state, or any other governmental entity without the necessity of a sealed bid sale. All sales or exchanges made under this subsection shall be for not less than fair market value as determined by the board and under such other terms and conditions the board determines to be in the best interest of the state.

SECTION 8. Subsection (a), Section 51.296, Natural Resources Code, as amended, is amended to read as follows:

(a) Except as provided in Subsection (b) of this section, no grant of easement or lease enumerated under Section ~~[Sections 51.291 through]~~ 51.293 of this code may be granted for a term that is longer than 10 years, but an easement or lease may be renewed by the board of regents of The University of Texas System ~~[officials responsible for execution of grants of easement and leases under this subchapter]~~. The term for easements or leases granted under Sections 51.291 and 51.292 of this subchapter may be for any term the commissioner deems to be in the best interest of the state.

SECTION 9. Section 2a, Chapter 372, Acts of the 51st Legislature, Regular Session, 1949, is amended to read as follows:

Sec. 2a. Any claimant to any portion of said land may perfect his title by applying to the Commissioner of the General Land Office to purchase the land claimed. Such application shall be accompanied by field notes of the tract claimed together with the filing fee established by the General Land Office for field notes ~~[of One Dollar (\$1)]~~ and evidence of such claimant's right and title. Upon receipt of a satisfactory application and satisfactory showing of right, such application shall be approved and the land awarded to the applicant. Within sixty (60) days after such award, the applicant shall pay to the Commissioner of the General Land Office for the use and benefit of the public school fund not less than the fair market value of the land as determined by the School Land Board ~~[the sum of Ten Dollars (\$10) per acre for the land]~~, and upon receipt thereof, the Commissioner shall issue to the claimant a patent to the land. The Commissioner is hereby authorized to make such rules and regulations as may be appropriate and necessary to accomplish the purpose of this Act.

SECTION 10. Section 11.071, Natural Resources Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Except as otherwise provided by law, no person may use for his benefit or cut or remove any mineral, plant, or anything of value located on land belonging to the permanent school fund without proper authority from the commissioner.

(f) In addition to any other penalties provided by law, a person violating the provisions of Subsection (e) of this section shall be liable for a civil penalty of not more than \$10,000 for each thing of value cut, used, or removed. All civil penalties collected under this subsection shall be credited to the permanent school fund.

SECTION 11. Subchapter D, Chapter 32, Natural Resources Code, as amended, is amended by adding Section 32.112 to read as follows:

Sec. 32.112. SALE OF TAX FORECLOSURE PROPERTY. (a) The board may sell by sealed bid all real property placed in the name of the state as a result of any tax foreclosure sale. The sealed bid sales shall be conducted in the same manner as sealed bid sales for public school land.

(b) The board may retain from the proceeds of a sale conducted under this section the cost of conducting the sale, including advertising, appraisal, and administrative costs. The balance of the proceeds shall be deposited in the State Treasury to the credit of the Texas capital trust fund.

SECTION 12. Section 31.159, Natural Resources Code, as amended, is amended to read as follows:

Sec. 31.159. FIRST OPTION TO PURCHASE. (a) If the real estate transaction authorized by the legislature is a sale of real property, the School Land Board has a first option to purchase the real property by cash purchase at current fair market value as determined by an independent appraisal.

(b) After the legislature authorizes the sale of real property, the division ~~[shall appoint an appraiser after complying with Subdivision (2) of Subsection (d) of this section. The division]~~ must give to the School Land Board a written notice of the proposed sale ~~[and must include in the notice a description of the appointed appraiser]~~. To exercise the option, the School Land Board, not later than the 30th day after the date the notice can first be considered by the board at a regular meeting, must give written notice to the division stating that the board has decided to exercise the option. If the School Land Board decides to exercise its option under this section, the division shall appoint an appraiser after complying with Subdivision (2) of Subsection (d) of this section. The School Land Board must complete the cash purchase not later than the 120th day after the date the division receives the notice from the board.

(c) If the School Land Board fails to complete the purchase within the time permitted, the division may extend the time for completing the purchase or dispose of the real property as authorized by the legislature.

(d)(1) Current fair market value shall be determined in accordance with the procedure prescribed by this subsection. Within 21 days after the day the School Land Board receives the notice given to the board under Subsection (b) of this section, the School Land Board shall appoint a second appraiser. If the School Land Board fails to appoint the second appraiser, the division shall appoint a second appraiser within 21 days after the expiration of said 21-day period in which the board could have appointed an appraiser. The two appraisers shall meet promptly and shall attempt to reach agreement on the current fair market value. If the two appraisers so selected do not reach agreement within 10 days of such meeting, a third appraiser shall be appointed by the division to reconcile the two previous appraisals. The determination of value by the third appraiser may not be less than the lower or more than the higher of the first two appraisals. The value determined by the third appraisal shall be final and binding on all parties. ~~[the two original appraisers shall appoint another appraiser whose appraisal shall be final and binding on both parties if said appraisal is at least as high as the lower of the appraisals of the two original appraisers. If said appraisal is not at least as high as the lower of the two original appraisals, the two original appraisers shall continue to appoint additional appraisers until an additional appraiser's appraisal is at least as high as the lower of the two original appraisals, and that appraisal shall be final and binding.]~~

(2) Each appraiser shall be qualified and disinterested and shall have M.A.I. or other comparable professional designation. The division may appoint an appraiser employed by the General Land Office for any one of the required

appraisals. The~~[-and the]~~ appointment of any other ~~[each]~~ appraiser shall ~~[only]~~ be made by the appointing party following receipt of at least three competitive bids, and if the cost of the appraisal is reasonably expected to exceed \$10,000, the appointing party shall utilize the notification procedure set out in Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), and all time periods described in this Act shall be extended for the number of days necessary to comply with said notification procedure. The appointing party shall award the appraisal services contract to the bidder submitting the lowest and best bid, and in determining who has submitted the lowest and best bid, the appointing party shall consider the factors set out in Subdivisions (1) through (9) of Subsection (e) of Section 3.11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). Expense of the appraisal shall be paid by the division.

SECTION 13. Subsection (b), Section 51.297, Natural Resources Code, as amended, is amended to read as follows:

(b) The person who obtains an ~~[the]~~ easement under Sections 51.291 and 51.292 of this code shall furnish to the commissioner a certified copy of the easement. The person who obtains an easement under Section 51.293 of this code shall furnish to the Board of Regents of The University of Texas System a certified copy of the easement.

SECTION 14. Amend Natural Resources Code, Chapter 31, Subchapter E by adding Sections 31.161-31.167 to read as follows:

Sec. 31.161. DEVELOPMENT PLAN. (a) If the legislature authorizes the sale or lease for non-governmental purposes of land belonging to the state, to the permanent school fund or to any of the dedicated funds of the state, other than the permanent university fund or any other lands subject to the administration and control of The University of Texas board of regents, the governing board or chief executive officer of the agency or institution possessing the land may request the Asset Management Division to promulgate a development plan on the land before it is offered for sale or lease.

(b) The purpose of a development plan is to conserve and enhance the value of land belonging to the state taking into consideration the preservation of the health, safety and general welfare of the communities in which the land is situated.

(c) The plan shall address such provisions as are necessary to implement the purposes of this section, including:

(1) Provisions for allocation and location of specific uses of the land, including residential, commercial, industrial, recreational or other appropriate uses.

(2) Provisions for densities and intensities of designated land uses.

(3) Provisions for the timing and rate of development.

(4) Provisions for timely delivery of adequate facilities and services, including water, wastewater collection and treatment systems, parks and public recreational facilities, drainage facilities, school sites, roads and transportation facilities.

(5) Provisions for needed zoning and other land use regulations.

(d) The plan shall comply with existing rules, regulations, orders or ordinances for land development to the extent such rules, regulations, orders or ordinances are not detrimental to the interests of the state as determined by the board of review.

Sec. 31.162. Submission of the plan to affected local government. (1) The plan shall be submitted to any local government having jurisdiction over the land in question for consideration.

(2) The local government shall evaluate the plan and either accept or reject the plan no later than six months after the submission of the plan by the division.

(3) The plan may only be rejected by the local government on grounds that it does not comply with local ordinances and land use regulations including, but not limited to, zoning and subdivision ordinances.

(4) If the plan is rejected, the local government shall specifically identify any ordinance with which the plan conflicts and propose specific modifications to the plan that will bring it into compliance with the local ordinance.

(5) If the plan is rejected by the affected local government, the Division may modify the plan to conform to the ordinances specifically identified by the local government and resubmit the plan for approval, or it may apply for necessary rezoning or variances from the local ordinances.

(6) Failure by the local government to act within six months will be deemed an acceptance by the local government of the plan.

Sec. 31.163. REZONING. (1) If the plan would require zoning inconsistent with any existing zoning or other land use regulation, the Asset Management Division or its designated representative may submit a request for rezoning to the local government with jurisdiction over the lands in question.

(2) The rezoning or variance request shall be submitted in the same manner as any such request is submitted to the affected local government, provided, however, the local government must take final action on the request no later than six months after the request for rezoning or variance is submitted.

(3) Failure by the local government to act within the six month period will be deemed an approval of the rezoning request by the local government.

Sec. 31.164. FEES AND ASSESSMENTS. (1) The local government may impose no application, filing or other fees or assessments on the state for consideration of the plan or the application for rezoning or variance submitted by the state.

(2) The local government may not require the submission of architectural, engineering, or impact studies, to be completed at state expense, before considering the plan or application for rezoning or variance.

Sec. 31.165. BOARD OF REVIEW. (1) If the local government denies the rezoning request, the matter may be appealed to a special board of review consisting of the following members:

(a) The members of the School Land Board;

(b) The chairman of the governing board of the agency or institution possessing the property, or his or her designated representative; and

(c) The mayor of the city or town in whose corporate boundaries or extraterritorial jurisdiction the land is located.

(d) The county judge of the county within which the land is located.

(2) The Commissioner of the General Land Office shall serve as chairman of the Special Board of Review.

(3) If the plan involves land belonging to the permanent school fund, the special board of review shall consist of the members of the school land board and the local officials, with the commissioner serving as chairman.

(4) If the land is not located within the corporate boundaries or the extraterritorial jurisdiction of a city or town, the board shall consist of the members of the school land board, the agency chairman, and the county judge with the commissioner serving as chairman.

Sec. 31.166. HEARING. (a) The board of review shall conduct one or more public hearings to consider the proposed development plan.

(b) Hearings shall be conducted in accordance with rules promulgated by the General Land Office for conduct of such special review.

(c) If land is located in more than one city or town, the hearings on any single tract of land may be combined.

(d) Any political subdivision in which the tract in question is located shall receive written notice of board hearings at least fourteen days prior to the hearing.

(e) At least one hearing shall be conducted in the county where the land is located.

(f) If after the hearings, the board of review determines that local zoning requirements are detrimental to the best interest of the state, it shall issue an order establishing a development plan to govern the use of the land as provided in this section.

(g) Development of the land shall be in accordance with the plan and must comply with all local rules, regulations, orders or ordinances except as specifically identified in an order of the board of review issued pursuant to Subsection (e) of this section. In the event that substantial progress is not made toward development of the tract within five (5) years of the date of adoption by the board of review, local development policies and procedures shall become applicable to development of the tract, unless the board of review promulgates a new plan.

(h) The hearing shall not be considered a contested case proceeding under the Administrative Procedure and Texas Register Act, Articles 6252-13a, Revised Civil Statutes of Texas, and shall not be subject to appeal thereunder.

Sec. 31.167. BINDING EFFECT OF DEVELOPMENT PLAN. (a) A development plan promulgated by the board of review and any plan accepted by a local government shall be final and binding on the state, its lessees, successors-in-interest and assigns and affected local governments or political subdivisions unless revised by the board of review.

(b) A local government, political subdivision, owner, builder, or developer or any other person may not modify the development plan without specific approval by the board of review.

(c) The board of review must file a copy of the development plan in the deed records of the county in which the land is located.

SECTION 15. REPEALER. Subsection (c), Section 51.052, Natural Resources Code, is repealed.

SECTION 16. REPEALER. Section 51.350, Natural Resources Code, is repealed.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment - Haley

Amend C.S.S.B. 478 by striking Section 7 on page 5.

The amendments were read.

Senator Leedom moved to concur in the House amendments.

The motion prevailed viva voce vote.

SENATE BILL 190 WITH HOUSE AMENDMENT

Senator Glasgow called S.B. 190 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Patrick

Amend S.B. 190 as follows:

Delete everything between the word "insurance" on line 19 page 3 and the word "Act" on line 25, page 3.

The amendment was read.

Senator Glasgow moved to concur in the House amendment.

The motion prevailed viva voce vote.

SENATE BILL 651 WITH HOUSE AMENDMENTS

Senator Parker called **S.B. 651** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Wolens

Amend **S.B. 651** by omitting "three times" on line 18, page 2 and by adding "interest" to line 19, page 2 after the word "fees".

Floor Amendment - Wolens

Amend S.B. 651

Amend Committee Amendment No. 1 by putting "," before the word "interest"

The amendments were read.

Senator Parker moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 651** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Parker, Chairman; Anderson, Armbrister, Henderson and Sims.

GUEST PRESENTED

Senator Zaffirini was recognized and introduced the Capitol Physician for the Day, Dr. Miguel Vazquez of Jourdanton.

The Senate expressed appreciation to Dr. Vazquez and welcomed him as a guest for the day.

SENATE BILL 1373 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1373, Relating to the creation, administration, powers, duties, operations, and financing of and the annexation of territory to and exclusion of territory from the Cliffs Municipal Utility District; providing for the issuance of bonds and the levy of property taxes.

The bill was read second time.

Senator Glasgow offered the following committee amendment to the bill:

Amend **S.B. 1373** as follows:

(1) On page 16, between lines 11 and 12, insert the following:

SECTION 18. EMINENT DOMAIN. (a) For the purpose of carrying out any power or authority conferred by this Act, the district may acquire any interest in property by condemnation in the manner provided by Chapter 21, Property Code.

(b) If the district, in the exercise of its power of eminent domain, makes necessary the relocation, raising, lowering, rerouting, or change in grade, or alteration in the construction of any highway, railroad, electric transmission or distribution line, telegraph or telephone properties and facilities, or pipelines, all necessary relocation, raising, lowering, rerouting, or change in grade, or alteration of construction shall be accomplished at the sole expense of the district. "Sole expense" means the actual cost of relocation, raising, lowering, rerouting, or change in grade or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility.

(2) Renumber subsequent sections accordingly.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 1373 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 1373 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

SENATE BILL 1502 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1502, Relating to the creation, administration, powers, duties, operations, financing and dissolution of Lakeside Utility and Reclamation District.

The bill was read second time.

Senator Glasgow offered the following committee amendment to the bill:

Amend S.B. 1502 as follows:

Amend SECTION 6 on page 12 as follows:

- 1) On line 9 insert "duties," between "powers" and "privileges,"
- 2) On line 14 insert "duties," between "powers," and "privileges,"

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 1502 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1502** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

HOUSE BILL 1509 ON SECOND READING

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1509, Relating to proof of water rights for release of funds by the Texas Water Development Board.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1509 ON THIRD READING

Senator Henderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1509** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

SENATE BILL 617 WITH HOUSE AMENDMENT

Senator Jones called **S.B. 617** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Colbert

Amend **S.B. 617** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 3.042, Treasury Act (Article 4393-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.042. **DISPOSITION OF INTEREST ON INVESTMENTS [TIME DEPOSITS]**. (a) Interest received from investments [~~time deposits~~] of money in funds and accounts in the charge of the treasurer shall be allocated as follows: to each constitutional fund there shall be credited the pro rata portion of the interest received due the fund; the remainder of the interest received, with the exception of

that portion required by other statutes to be credited on a pro rata basis to protested [tax] payments, shall be credited to the General Revenue Fund. The legislature may appropriate a portion of that interest to the treasurer in the amount necessary to reimburse the treasurer for costs incurred in receiving, paying, accounting for, investing, and safekeeping money in those funds and accounts. Amounts appropriated for that purpose shall be deposited to the credit of the fund established for the deposit of commissions reserved to the treasurer under Section 3.022(d) of this Act. The interest received shall be allocated on a monthly basis.

(b) If a deficit occurs in the General Revenue Fund, the treasurer may place with a designated depository bank an offsetting compensating balance in a special depository account known as special demand account secured by general revenue warrants only.

(c) The treasurer is entitled to rely on the opinion and advice of the attorney general for the proper interpretation and application of this section.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Jones moved to concur in the House amendment.

The motion prevailed viva voce vote.

SENATE BILL 789 WITH HOUSE AMENDMENT

Senator Farabee called S.B. 789 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Gibson

Amend S.B. 789 as follows: Insert "(1)" between the words "than" and "the" on page 2, line 13;

Strike the comma and insert "or, (2) the projected average interest yield to be earned on funds invested by the Treasurer over the life of the note issue," between the comma and the word "as" on page 2, line 14.

The amendment was read.

Senator Farabee moved to concur in the House amendment.

The motion prevailed viva voce vote.

SENATE BILL 370 WITH HOUSE AMENDMENT

Senator Harris called S.B. 370 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Gavin

Amend S.B. 370 as follows:

- (1) Delete "August 31, 1987" on line 17, Page 2 and substituting in Lieu thereof "the effective date of this act".
- (2) Striking Section 2 of the bill and substituting the following:

SECTION 2.

(a) Section 2.02, Insurance Code, as amended by this Act, applies only to articles of incorporation filed with the State Board of Insurance on or after the effective date of this Act. Articles of incorporation filed before that date are governed by the law that existed at the time the articles of incorporation were filed with the State Board of Insurance, and that law is continued in effect for that purpose.

(b) Any change of control approved by the commissioner of insurance pursuant to an acquisition statement filed with the commissioner before the effective date of this Act shall be deemed to have occurred the day before the effective date of the act for purposes of determining capital and surplus requirements.

The amendment was read.

Senator Harris moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

SENATE BILL 1142 WITH HOUSE AMENDMENTS

Senator Harris called **S.B. 1142** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Criss

Amend **S.B. 1142** as follows:

On page 4, on line 9, after the period, add:

An arbitrator may recommend a refund on a pro-rata basis if it is determined that a consumer's complaint is valid.

Committee Amendment No. 2 - Criss

Amend **S.B. 1142** as follows:

On page 5, on line 2, after (b) and before A, insert:

A career counseling service must provide a copy of the service contract to the consumer at the first interview.

Committee Amendment No. 3 - Criss

Amend **S.B. 1142** as follows:

On page 6, after line 9, add:

OR WITH THE TEXAS DEPARTMENT OF LABOR AND STANDARDS,
P. O. 12157, CAPITOL STATION, AUSTIN, TEXAS, 78711, (512) 463-5520.

Floor Amendment No. 1 - Connelly

Amend **S.B. 1142** as follows:

- (1) On page 5, line 16, strike "The contract must list a toll-free number".
- (2) On page 5, strike line 17.
- (3) On page 5, line 18, strike "complaints."
- (4) On page 6, strike lines 6-9.

- (5) On page 6, line 10, strike “(4)” and substitute “(3)”.

Floor Amendment No. 2 - Connelly

Amend **S.B. 1142** as follows:

(1) On page 2 strike line 6 and substitute the following:
“state, any political subdivision of this state, or any organization receiving appropriated funds from or under contract with those governmental entities;”

(2) On page 2, line 9, strike the period and substitute
“; or”.

(3) On page 2 between lines 9 and 10 insert the following:
“(4) A non-profit organization qualifying under Section 501 (c)(3) of the Internal Revenue Code of 1986, providing a service described in this Act, as part of its charitable purposes.”

The amendments were read.

Senator Harris moved to concur in the House amendments.

The motion prevailed viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 242
ON SECOND READING**

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 242, Relating to regulation of dispensing opticians; providing a penalty.

The bill was read second time.

Senator Jones offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 242**, line 49, page 2 of the printed bill by adding the following words at the end of the word “whatsoever”:

“, unless directed or approved by the physician.”

The amendment was read and was adopted viva voce vote.

Senator Jones offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.S.B. 242**, Section 13, at lines 2 through 13, page 5 of the printed bill by deleting all of subsections (d) and (e), and relettering subsequent subsections accordingly.

The amendment was read and was adopted viva voce vote.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

RECORD OF VOTE

Senator Green asked to be recorded as voting “Nay” on the passage of the bill to engrossment.

**COMMITTEE SUBSTITUTE SENATE BILL 242
ON THIRD READING**

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 242 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Uribe, Whitmire, Zaffirini.

Nays: Green, Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Green asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE SENATE BILL 909
ON SECOND READING**

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 909, Relating to the authority of the Harris-Galveston Coastal Subsidence District to require certain cities to convert to surface water use.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Amend C.S.S.B. 909 by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 284, Acts of the 64th Legislature, Regular Session, 1975, is amended by adding Sections 19A, 19B, and 36A to read as follows:

Sec. 19A. LIMITATIONS ON CONVERSION TO SURFACE WATER. (a) The board may not issue an order requiring a person to completely or partially discontinue the use of groundwater unless the person is able to acquire a water supply that is composed of surface water needed to replace the water supply covered by the order. Nothing in this Section 19A shall limit the board's authority to issue orders, rules and regulations requiring a person to reduce groundwater use by eliminating waste or implementing water conservation. If the person covered by an order under this subsection acquires an alternative water supply to fulfill the needs created by the board's order under this subsection and files with the commission a written request for monitoring of the alternative supply, the commission shall monitor annually from the date of request to the expiration of the annual permit the water delivered to the person covered by the order to determine the percentage of that water that is surface water and the percentage of that water that is groundwater. The water deliveries must be monitored at random times at all points of connection between the purchaser's and seller's water systems. Samples taken through monitoring must be analyzed by water chemists employed by or contracting with the commission. The water chemist making each analysis shall

issue a certified written analysis of the percentages of surface water and groundwater included in the sample. Not later than the 15th day after the last day of each permit year, the commission shall issue an annual certified written analysis based on all of the samples collected that will state the annual average percentage of surface water and the annual average percentage of groundwater provided to the purchaser by the seller for that permit year. In addition to the percentage of groundwater authorized to be used by the board's order, the person may use in the current permit year an additional percentage of groundwater that is equal to a percentage derived by multiplying the annual average percentage of groundwater delivered to that person during the preceding permit year times the total percentage of alternative water supply mandated by the Board's order for the current year. In this section, "alternative water supply" means a water supply that it is necessary for the person to acquire from sources other than its own groundwater supply to comply with the board's order. The commission shall assess reasonable fees to cover the costs of the water sampling and analysis described in this section on the following basis: one-half to the water purchaser and one-half to the water seller. Upon requests, the Commission shall make results of the analysis available to the purchaser, seller and the board.

Sec. 19B. APPEAL OF SURFACE WATER RATES. If a person required to convert to surface water purchases that water supply wholesale from a political subdivision as defined by Section 12.013(b), Water Code, the rates charged by the political subdivision to that person may be appealed to the commission under Chapter 12, Water Code, and the rules adopted under that chapter apply to appeals under this section. The commission shall convene the hearing on the appeal not later than the 180th day after the date on which the appeal is filed with the commission and shall render a final decision on the appeal not later than the 60th day following the date on which the hearing ends.

Sec. 36A. APPEAL OF CERTAIN DISTRICT ACTIONS TO THE COMMISSION. (a) As an alternative to the appeal provided in Section 36 of this Act, a person who is granted a permit authorizing withdrawal of groundwater in an amount less than requested by that person may appeal the board's final decision to the commission. The appeal shall be filed within 60 days after final order of the Board. A person shall be informed in the Notice of Public Hearing when an order to convert to surface water is to be considered.

(b) On written request of the person proposing to appeal an order under Subsection (a) of this section, the board shall make written findings and conclusions with respect to the order and shall provide certified copies of the findings and conclusions to the requesting person not later than the 35th day after the date on which the written request is submitted to the board.

(c) The effect of a board order is stayed until the decision of the commission in an appeal under this section is final.

(d) The review on appeal by the commission under this section is governed by the substantial evidence rule as defined by the Administrative Procedure and Texas Register Act (Article 6252-13a, Section 19(e)(1)(6), Vernon's Texas Civil Statutes).

(e) The commission may adopt necessary rules to carry out the provisions of this section.

(f) An appeal from a final decision of the commission is to a district court in Travis County and is governed by the substantial evidence rule. Any party to the proceedings before the commission may appeal a decision of the district court in the manner provided for other civil actions, but a party appealing a decision of a district court is not required to provide an appeal bond.

(g) The review of a commission order on appeal shall be under the substantial evidence rule.

(h) Under this section, the commission may adopt and assess reasonable and necessary fees adequate to recover the costs of the commission in administering this section.

SECTION 2. Section 2, Chapter 284, Acts of the 64th Legislature, Regular Session, 1975, is amended by adding Subdivision (10) to read as follows:

(10) "Commission" means the Texas Water Commission.

SECTION 3. Subsections (a) and (b), Section 5, Chapter 284, Acts of the 64th Legislature, Regular Session, 1975, are amended to read as follows:

(a) The district shall be governed by a board of directors composed of 17 ~~[15]~~ members.

(b) The members of the board shall be chosen as follows:

(1) six members from the city in the district having the largest population of any city in the district, according to the most recent federal census, to be appointed by the mayor of that city, one of these members to be a representative of industry;

(2) one member from the city in the district having the next largest population of any city in the district, according to the most recent federal census, to be appointed by the mayor of that city;

(3) two members from all incorporated cities in Galveston County, appointed by the mayors of those cities;

(4) one member from the city of Baytown, appointed by the mayor of that city;

(5) two members appointed by the Commissioners Court of Harris County, one of these members to be a representative of agriculture and one to be a representative of industry, provided that neither of these members shall be residents of the city in the district having the largest population of any city in the district;

(6) two members appointed by the Commissioners Court of Galveston County; ~~[and]~~

(7) one member from Harris County chosen by the mayors of the cities of Deer Park, Galena Park, La Porte, Nassau Bay, and Seabrook and the president of the Clear Lake City Water Authority;

(8) one member from Harris County chosen by the mayors of the cities of West University Place, Southside Place, Bellaire, and Jacinto City; and

(9) one member from Harris County chosen by the mayors of the cities of Humble, Piney Point Village, Hedwig Village, Bunker Hill Village, Hunter's Creek Village, Hilshire Village, and the village of Spring Valley.

SECTION 4. (a) Not later than the 30th day after the effective date of this Act, the general manager of the Harris-Galveston Coastal Subsidence District shall call and hold a meeting at the district's main office for the selection of the two additional directors added to the board of directors of the district by this Act. The general manager shall mail written notice of the time, place, and purpose of the meeting to each person designated in Sections 5(b)(8) and (9), Chapter 284, Acts of the 64th Legislature, Regular Session, 1975, to choose the additional directors. The notice must be sent by certified mail return receipt requested not less than the 10th day before the date set for the meeting.

(b) The initial directors appointed under Sections 5(b)(8) and (9), Chapter 284, Acts of the 64th Legislature, Regular Session, 1975, shall serve until January 31, 1988. Subsequent directors shall be selected to fill those positions in the manner and for the terms provided by law for selection of other members of the board of directors of the Harris-Galveston Coastal Subsidence District.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 909
ON THIRD READING**

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 909 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

SENATE BILL 1397 ON SECOND READING

Senator Parmer asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

S.B. 1397, Relating to investment of assets of certain public retirement systems in venture capital projects.

There was objection.

Senator Parmer then moved to suspend the regular order of business and take up **S.B. 1397** for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Edwards, Glasgow, Green, Johnson, Jones, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejada, Uribe, Washington, Whitmire, Zaffirini.

Nays: Brown, Farabee, Harris, Henderson, Leedom.

Absent-excused: Truan.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 1397 ON THIRD READING

Senator Parmer moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1397** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Edwards, Glasgow, Green, Johnson, Jones, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejada, Uribe, Whitmire, Zaffirini.

Nays: Brown, Farabee, Harris, Henderson, Leedom, Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 5.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Edwards, Glasgow, Green, Johnson, Jones, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Uribe, Washington, Whitmire, Zaffirini.

Nays: Brown, Farabee, Harris, Henderson, Leedom.

Absent-excused: Truan.

**COMMITTEE SUBSTITUTE SENATE BILL 633
ON SECOND READING**

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 633, Relating to the dispensing of dangerous drugs under prescriptions issued by certain foreign practitioners.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 633
ON THIRD READING**

Senator Uribe moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 633** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

(Senator Glasgow in Chair)

**COMMITTEE SUBSTITUTE SENATE BILL 780
ON SECOND READING**

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 780, Relating to the regulation of lay midwives; providing criminal and civil penalties.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 780
ON THIRD READING**

Senator Uribe moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 780** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

SENATE BILL 1364 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1364, Relating to allowing certain religious, educational, and charitable organizations to hold occasional tax-free sales or auctions.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 1364 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1364** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

COMMITTEE SUBSTITUTE SENATE BILL 1439 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1439, Relating to provision of alternative treatment benefits for mental or emotional illnesses and disorders under certain group insurance policies, group hospital service plans, and health care plans of health maintenance organizations.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Amend **C.S.S.B. 1439** by striking everything below the enacting clause and by substituting in lieu thereof the following:

SECTION 1. Chapter 3, Insurance Code, is amended by adding Article 3.72 to read as follows:

Art. 3.72. ALTERNATIVE MENTAL HEALTH TREATMENT BENEFITS. (a) In this article:

(1) "Crisis stabilization unit" means a 24-hour residential program that is usually short-term in nature and that provides intensive supervision and highly structured activities to persons who are demonstrating an acute demonstrable psychiatric crisis of moderate to severe proportions.

(2) "Residential treatment center for children and adolescents" means a child-care institution that provides residential care and treatment for emotionally disturbed children and adolescents and that is accredited as a residential treatment center by the Council on Accreditation, the Joint Commission on Accreditation of Hospitals, or the American Association of Psychiatric Services for Children.

(3) "Individual treatment plan" means a treatment plan approved by a licensed psychologist certified as a health services provider, a doctor of medicine, a doctor of osteopathy, or a board certified or board eligible psychiatrist.

(b) Subject to the conditions of this article, a group policy of accident and sickness insurance delivered or issued for delivery to a person in this state, including a group policy issued by a group hospital service plan subject to Chapter 20 of this code and a group health care plan provided by a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), that provides coverage for treatment of mental or emotional illness or disorder for an insured when confined in a hospital must also include coverage that is not less favorable for treatment in a residential treatment center for children and adolescents or from a crisis stabilization unit.

(c) Coverage provided under this article is subject to the following conditions:

(1) the benefits provided by this article may be used only in situations in which the insured has a serious mental illness which substantially impairs the person's thought, perception of reality, emotional process, or judgment or grossly impairs behavior as manifested by recent disturbed behavior and which would otherwise necessitate confinement in a hospital if such care and treatment were not available through a crisis stabilization unit or residential treatment center for children and adolescents;

(2) the services rendered for which benefits are to be paid must be based on an individual treatment plan;

(3) providers of services for which benefits are to be paid must be licensed or operated by the appropriate state agency or board to provide those services; and

(4) the benefits are subject to the same benefit maximums, durational limits, deductibles, and coinsurance factors that apply to inpatient psychiatric treatment.

(d) Treatment in a residential treatment center for children and adolescents shall be determined as if necessary care and treatment in a residential treatment center for children and adolescents were inpatient care and treatment in a hospital, and each two days of treatment in a residential treatment center for children and adolescents will be considered equal to one day of treatment of mental or emotional illness or disorder in a hospital or inpatient program for the purpose of determining policy benefits and benefit maximums.

(e) Treatment provided through crisis stabilization units shall be determined as if necessary care and treatment through crisis stabilization units were inpatient care and treatment in a hospital, and two days in a crisis stabilization unit are considered equal to one day of treatment of mental or emotional illness or disorder in a hospital or inpatient program for the purpose of determining policy benefits and benefit maximums. Treatment provided through crisis stabilization units shall be reimbursed for facilities licensed or certified by the Texas Department of Mental Health and Mental Retardation.

(f) The State Board of Insurance shall monitor and review the minimum ratios of reimbursement required by Sections (d) and (e) of this article for alternative treatments, and if the board determines that the limits provided by this article are creating an artificial rise in costs of services, the board, by rule, may adjust the ratios to the extent necessary to prevent this artificial rise in costs of services. Before the board adopts a rule adjusting a ratio of reimbursement, the board shall give notice and hold a hearing to consider the data relating to the adjustment and to determine if that data justifies the adjustment. The first review by the board of ratios of

reimbursement under this section must be made before January 1, 1990, and the board shall make subsequent reviews of the ratios of reimbursement at least every two years after the first review.

(g) The Texas Department of Mental Health and Mental Retardation shall assist the board in carrying out its responsibilities under this article. To carry out this article, the State Board of Insurance and the Texas Department of Mental Health and Mental Retardation may by rule adopt memoranda of understanding.

SECTION 2. Article 20A.09, Texas Insurance Code, is amended by adding Subsection (h) to read as follows:

(h) Article 3.72 of the Texas Insurance Code applies to health maintenance organizations to the extent that such article is not in conflict with this Act and to the extent that the residential treatment center or crisis stabilization unit is located within the service area of the health maintenance organization and subject to such inspection and review as required by this Act or the rules hereunder.

SECTION 3. (a) This Act takes effect September 1, 1987.

(b) Article 3.72, Insurance Code, applies only to policies and contracts delivered, issued for delivery, or renewed on and after January 1, 1988. Policies and contracts delivered, issued for delivery, or renewed before January 1, 1988, are governed by the law as it existed at the time they were delivered, issued, or renewed.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 1439 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.B. 1439 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 1079 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.B. 1079, Relating to the provision of emergency medical services.

The bill was read second time and was passed to engrossment viva voce vote.

RECORD OF VOTE

Senator Lyon asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**COMMITTEE SUBSTITUTE SENATE BILL 1079
ON THIRD READING**

Senator Tejeda moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 1079 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Uribe, Whitmire, Zaffirini.

Nays: Lyon, Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Lyon asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 730 ON SECOND READING

On motion of Senator Sarpalius and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 730, Relating to authorizing a savings and loan association to be used as a depository for funds of an independent school district.

The bill was read second time.

Senator Sarpalius offered the following amendment to the bill:

Amend **S.B. 730**, Section 2, to read as follows:

SECTION 2. Section 23.74, Education Code, is amended to read as follows:
Sec. 23.74. DEPOSITORY MUST BE A BANK OR SAVINGS AND LOAN ASSOCIATION. A school depository under the terms and provisions of this subchapter shall be a bank located in the State of Texas or a savings and loan association located in the school district, provided the school district has a total enrollment of less than 150 students. A school district may select a savings and loan association as a depository only if there is not a bank in the district.

The amendment was read and was adopted viva voce vote.

On motion of Senator Sarpalius and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 730 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 730** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

(President in Chair)

SENATE JOINT RESOLUTION 17 WITH HOUSE AMENDMENT

By unanimous consent, Senator Farabee called S.J.R. 17 from the President's table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

Floor Amendment - Williamson

Amend S.J.R. 17 by striking all below the resolving clause and substituting the following:

SECTION 1. Article III of the Texas Constitution is amended by adding Section 66 to read as follows:

Sec. 66. The legislature may include the Speaker of the House of Representatives in the membership of, or grant to the Speaker or the Lieutenant Governor the power to appoint a member of the legislature to, an agency or committee that includes elected officers of the executive department of State government and performs executive functions.

SECTION 2. This constitutional amendment shall be submitted to the voters at an election to be held November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment permitting legislative officers to serve on executive committees that include elected State officials."

The amendment was read.

Senator Farabee moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.J.R. 17 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the resolution: Senators Farabee, Chairman; Armbrister, Caperton, Henderson and Washington.

SENATE BILL 691 ON SECOND READING

On motion of Senator Anderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 691, Relating to authority of a governmental entity or corporation to establish, operate, and maintain a foreign trade zone.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 691 ON THIRD READING

Senator Anderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 691 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

SENATE BILL 1279 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1279, Relating to the ability of the State or any political subdivision to take the safety record of the bidder into consideration when evaluating the acceptance of a bid.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

Amend **S.B. 1279** by striking everything below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Subsection 2(b) of Article 2368a, TEX. REV. CIV. STAT., is amended to read as follows:

(b) The competitive sealed bidding procedure as provided herein shall be used for the award of all contracts subject to the provisions of this section, except that in the case of high technology procurements the city may follow the competitive sealed proposal procedure provided in Subsection (c) of this section.

Whenever the competitive sealed bidding procedure applies to a proposed contract, notice of the time and place when and where such a contract shall be let shall be published in such city once a week for two (2) consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least fourteen (14) days prior to the date set for letting said contract; and said contract shall be let to the lowest responsible bidder. In determining who is a responsible bidder, the governing body may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, provided, however, that the governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder, has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the responsibility of that bidder and, provided further, that such determinations are not arbitrary and capricious. The governing body shall have the right to reject any and all bids, and if the contract is for the construction of public works, then the successful bidder shall be required to give a good and sufficient bond in the full amount of the contract price, for the faithful performance of such contract, executed by some surety company authorized to do business in this state in accordance with the provisions of Article 5160, Revised Statutes, and the amendments thereto. However, the city in making any contract calling for or requiring the expenditure or payment of less than \$100,000 may, in lieu of the bond

requirement, provide in the contract that no money will be paid to the contractor until completion and acceptance of the work by the city. If there is no newspaper published in such city, then the notice of letting such contract shall be given by causing notice thereof to be posted at the city hall for (14) days prior to the time of letting such contract. Trade secrets and confidential information contained in the competitive sealed bids shall not be open for public inspection.

SECTION 2. Section 5 of Article 2368a.3, TEX. REV. CIV. STAT., is amended to read as follows:

Sec. 5. A governmental entity shall have the right to reject any and all bids. Contracts covered by this Act shall be awarded to the lowest, responsible bidder, but a contract may not be awarded to a bidder who is not the lowest bidder unless prior to the award each lower bidder is given notice of the proposed award and is given an opportunity to appear before the governing body of the governmental entity or the designated representative of the governing body and present evidence concerning the bidder's responsibility. In determining who is a responsible bidder, the governing body may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, provided, however, that the governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder, has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the responsibility of that bidder and, provided further, that such determinations are not arbitrary and capricious.

SECTION 3. Section 7 of Article 2368a.5, TEX. REV. CIV. STAT., is amended to read as follows:

Sec. 7. (a) The officer in charge of opening the bids shall present them to the commissioners court in session. The court shall award the contract to the responsible bidder who submits the lowest and best bid, or the court shall reject all bids and publish a new notice.

(b) In cases where two responsible bidders submit the lowest and best bid, the commissioners court shall decide between the two by drawing lots in a manner prescribed by the county judge.

(c) A contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and is given an opportunity to appear before the commissioners court and present evidence concerning the lower bidder's responsibility. In determining who is a responsible bidder, the commissioners court may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, provided, however, that the commissioners court has adopted a written definition and criteria for accurately determining the safety record of a bidder, has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the responsibility of that bidder and, provided further, that such determinations are not arbitrary and capricious.

SECTION 4. Subsection 3.11(e) of Article 601b, TEX. REV. CIV. STAT., is amended to read as follows:

(e) Award of Contract. The commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required. Complying with the specified time limit for submission of written data, samples, or models on or before bid opening time is essential to the materiality of a bid, provided, however, that the commission shall have the authority to waive this provision if the failure to comply is beyond the control of the bidder. In determining who is the lowest and best bidder, the commission may take into account the safety

record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, provided, however, that the commission has adopted a written definition and criteria for accurately determining the safety record of a bidder, has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the lowest and best bidder and, provided further, that such determinations are not arbitrary and capricious. In determining who is the lowest and best bidder, in addition to price, the commission shall consider:

- (1) the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services, to the particular use required;
- (2) the number and scope of conditions attached to the bid;
- (3) the ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (4) whether the bidder can perform the contract or provide the service promptly, or within the time required, without delay or interference;
- (5) the character, responsibility, integrity, reputation, and experience of the bidder;
- (6) the quality of performance of previous contracts or services;
- (7) the previous and existing compliance by the bidder with laws relating to the contract or service;
- (8) any previous or existing noncompliance by the bidder with specifications requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;
- (9) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; and
- (10) the ability of the bidder to provide future maintenance, repair parts, and service for the use of the subject of the contract.

SECTION 5. This Act takes effect September 1, 1987.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 1279 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 1279 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

SENATE BILL 275 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 275, Relating to the addition of certain certified fire inspectors to those persons who are peace officers.

The bill was read second time.

Senator Green offered the following amendment to the bill:

Amend **S.B. 275** by adding Subdivisions (22) and (23) to Article 2.12 to read as follows:

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 13, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes); and

(23) officers commissioned by the boards of trustees of school districts under Section 21.483, Education Code.

The amendment was read and was adopted viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 275 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 275** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

S.C.R. 23	S.B. 537
S.C.R. 57	S.B. 659
S.C.R. 118	S.B. 661
S.B. 43	S.B. 715
S.B. 217	S.B. 861
S.B. 333	S.B. 862
S.B. 340	S.B. 879
S.B. 367	S.B. 892
S.B. 373	S.B. 896
S.B. 410	S.B. 916
S.B. 440	S.B. 953
S.B. 485	S.B. 1021
S.B. 496	S.B. 1111
S.B. 505	S.B. 1301
S.B. 524	S.B. 1313

S.B. 526
S.B. 536

S.B. 1333
S.B. 1428

SENATE BILL 1432 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1432, Relating to the sale of certain state-owned real property to The University of Texas and to the disposition of proceeds.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 1432 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1432** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

(Senator Glasgow in Chair)

SENATE BILL 1518 ON SECOND READING

Senator Blake asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

S.B. 1518, Relating to the creation, administration, powers, duties, operations, fiscal procedures, and annexation authority of the Anderson County Underground Water Conservation District.

There was objection.

Senator Blake then moved to suspend the regular order of business and take up **S.B. 1518** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Anderson, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Glasgow, Green, Harris, Henderson, Krier, Leedom, Lyon, McFarland, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Uribe, Whitmire, Zaffirini.

Nays: Armbrister, Farabee, Johnson, Jones, Montford, Washington.

Absent-excused: Truan.

The bill was read second time and was passed to engrossment viva voce vote.

RECORD OF VOTE

Senator Montford asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

SENATE BILL 1518 ON THIRD READING

Senator Blake moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1518** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Glasgow, Green, Harris, Henderson, Krier, Leedom, Lyon, McFarland, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Uribe, Whitmire, Zaffirini.

Nays: Farabee, Johnson, Jones, Montford, Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 24, Nays 6.

Yeas: Anderson, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Glasgow, Green, Harris, Henderson, Krier, Leedom, Lyon, McFarland, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Uribe, Whitmire, Zaffirini.

Nays: Armbrister, Farabee, Johnson, Jones, Montford, Washington.

Absent-excused: Truan.

ANNOUNCEMENT RELATING TO SENATOR TRUAN

Senator Zaffirini was recognized and announced to the Senate that Senator Truan's condition, following heart surgery on yesterday, had been upgraded to "fair" and that he was recovering nicely.

SENATE BILL 974 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 974, Relating to certain powers of the secretary of state regarding computer software and access to information stored in computer record banks.

The bill was read second time.

Senator Parker offered the following committee amendment to the bill:

Amend **S.B. 974**, line 11 by adding the following language after "in" and before "state": "secretary of".

The committee amendment was read and was adopted.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 974 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 974** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

**COMMITTEE SUBSTITUTE SENATE BILL 1123
ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1123, Relating to suits to establish paternity and voluntary legitimation, court-ordered support, and to termination of the rights of an alleged or probable father.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Amend **C.S.S.B. 1123** as follows:

Amend SECTION 4 by striking SECTION 4 and substituting the following:

SECTION 4. Subsections (a) and (b), Section 12.02, Family Code, are amended to read as follows:

(a) A child is the legitimate child of his biological father if the child is born or conceived before ~~or during~~ the marriage of his biological father and mother. A child is rebuttably presumed to be the legitimate child of a man if the child is born during the marriage of, or within the period of gestation following the dissolution of the marriage of, the man and the mother of the child.

(b) A child is the legitimate child of his biological father if at any time his mother and biological father have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void, and the child is born or conceived before or during the attempted marriage.

The amendment was read and was adopted viva voce vote.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 1123
ON THIRD READING**

Senator Armbrister moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1123** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 515
ON SECOND READING**

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 515, Relating to the dismissal of certain misdemeanor charges involving traffic offenses on completion of a defensive driving course.

The bill was read second time.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 515** as follows:

On Page 1, line 40, add the following language before the word “the”:

within 30 days of the answer date on the ticket,

The amendment was read and was adopted viva voce vote.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 2

C.S.S.B. 515 is amended as follows:

In Section 1, page 1, line 32, the words “defensive” and “driver’s” are struck and the words “driving” and “safety” are inserted in their place. Similarly, on page 1, line 37, the words “defensive” and “driver’s” are struck and the words “driving” and “safety” are inserted in their place.

On page 2, line 5, insert the following language after “\$10” and before “to”:

, including any special fees authorized by statute or municipal ordinance,

The amendment was read and was adopted viva voce vote.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 515
ON THIRD READING**

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 515** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

SENATE BILL 1339 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1339, Relating to the exemption of certain vehicles from motor bus regulation by the Railroad Commission of Texas and to insurance standards for the vehicles.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 1339 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1339** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

**COMMITTEE SUBSTITUTE SENATE BILL 1093
ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1093, Relating to the filing, prosecution, and enforcement of protective orders.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 1093
ON THIRD READING**

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1093** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

**CONFERENCE COMMITTEE REPORT
SENATE BILL 95**

Senator Blake submitted the following Conference Committee Report:

Austin, Texas
May 15, 1987

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 95 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BLAKE
BROWN
SIMS
GLASGOW
HARRIS

On the part of the Senate

WRIGHT
MADLA
CLEMONS
BERLANGA
SCHOOLCRAFT

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to changing the name of the State Board of Morticians to the Texas Funeral Service Commission, to the powers and duties of that commission, and to regulation of funeral directing and embalming; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended by amending Subsections B, C, E, H, J, K, T, and V, and by adding Subsection W to read as follows:

B. The term "directing a funeral," or "funeral directing" as herein used, shall mean the directing ~~[or personal supervision]~~ by a licensed funeral director from the time of the first call until interment or entombment services are completed, or until the body is released for transport to ~~[delivered into the hands of the persons in charge of]~~ a crematorium, or released ~~[until the body is delivered to another funeral director or]~~ to a public carrier.

C. The term "first call" shall mean the beginning of the relationship and duty of the funeral director to take charge of a dead human body and have same prepared by embalming, cremation, or otherwise, for burial or disposition, provided all laws pertaining to public health in this state are complied with. "First call" does not include calls made by ambulance, when the person dispatching the ambulance does not know whether a dead human body is to be picked up. A dead human body shall be picked up on first call only under the direction and personal supervision of a licensed funeral director or embalmer. A dead human body may be transferred from one funeral home to another funeral home and from a funeral home to and from a morgue where an autopsy is to be performed without a licensed funeral director personally making the transfer. In circumstances in which there is no reasonable probability that unlicensed personnel will encounter family members or other persons with whom funeral arrangements are normally made by licensed funeral directors or embalmers, a dead human body may be picked up or transferred without the personal supervision of a funeral director or embalmer. Any inadvertent contact with family members or other persons shall be restricted to unlicensed personnel identifying the employer to the person, arranging an appointment with the employer for any person who indicates a desire to make funeral arrangements for the deceased, and making any disclosure to the person that is required by any federal or state regulation. A funeral director or embalmer who directs the removal or transfer of a dead human body without providing personal supervision shall be held strictly accountable for compliance with the requirements of, and exceptions to, "first call" as provided by this Act.

E. The term "apprentice" as herein used is a person engaged in learning the practice of funeral directing and/or embalming under the instruction, direction, and

personal supervision of a duly licensed funeral director and/or embalmer of and in the State of Texas in accordance with the provisions of this Act, and having been duly registered as such by the commission [Board] prior thereto.

H. The term "due notice" as herein used shall mean published notice of the time and place of regular meetings of the commission [Board]. Notice of time, place, and purpose of any meeting of the commission filed with the Texas Register [Board] published in at least three (3) daily newspapers in three (3) separate cities in the state, at least seven (7) [fifteen (15)] days prior thereto, shall be adequate notice for any regular meeting, including the giving of examinations; however, a notice of a meeting wherein a change in the rules and regulations of the commission [Board] is to be considered, shall be given by written notice in the [to all licensees in the State of] Texas Register[, at the address registered with the Board,] at least thirty (30) days in advance of any hearing thereon.

J. An "accredited school or college of mortuary science" is a school or college which maintains a course of instruction of not less than forty-eight (48) calendar weeks or four (4) academic quarters or college terms and which gives a course of instruction that includes but is not limited to the following fundamental subjects: (a) mortuary management and administration; (b) legal medicine and toxicology as it pertains to funeral directing; (c) public health, hygiene and sanitary science; (d) mortuary science, to include embalming technique, in all its aspects; chemistry of embalming, color harmony; discoloration, its causes, effects and treatment; treatment of special cases; restorative art; funeral management; and professional ethics; (e) anatomy and physiology; (f) chemistry, organic and inorganic; (g) pathology; (h) bacteriology; (i) sanitation and hygiene; (j) public health regulations; (k) other courses of instruction in fundamental subjects prescribed by the commission [Board]; and (l) local, state, and federal rules and laws relating to the care and disposition of dead human bodies.

K. An "official application blank," as that term is used herein, is a sheet bearing blank spaces for the entering of stipulated information, which sheet shall be filled in by any person who seeks employment as funeral director or embalmer in this state. The form of this application blank shall be prescribed by the commission [Board]. Prospective employers shall have job applicants fill in this application blank and shall remit it upon completion to the commission [Board]. The commission [Board] shall inform employers as soon as possible of the status of the license of any person for whom it receives an official application blank.

T. "Written memorandum" means a written statement that itemizes the cost of funeral services or merchandise selected by a customer from the retail price list. The memorandum must also state the amount paid or owed to another person by the funeral establishment on behalf of the customer and each fee charged the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer. The memorandum must include the name, address, and telephone number of the funeral establishment and the following printed notice: "Charges are made only for items that are used. If the type of funeral selected requires extra items, we will explain the reasons for the extra items in writing on this memorandum." The memorandum must include the name, mailing address, and telephone number of the Texas Funeral Service Commission [State Board of Morticians] and a statement indicating that complaints may be directed to the commission [Board].

V. "Prospective customer" means any [a] consumer who enters a funeral establishment and inquires about [the price of] any funeral service, cremation, or merchandise. The funeral establishment may not make a distinction in providing funeral information to any customer regardless of any affiliation of the customer or whether the customer has a present need for the services or merchandise.

W. "Commission" means the Texas Funeral Service Commission.

SECTION 2. Section 2, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. TEXAS FUNERAL SERVICE COMMISSION [~~THE BOARD~~].

A. (1) There is hereby created the Texas Funeral Service Commission [~~State Board of Morticians~~], with offices located in Austin, Texas, consisting of nine (9) commissioners [~~members~~] who shall be citizens of the United States and residents of the State of Texas. Five (5) commissioners [~~members~~] must be licensed embalmers or funeral directors in the State of Texas and each of these commissioners [~~members~~] must have a minimum of five (5) years, consecutively, of such experience in this state immediately preceding appointment. At least three (3) such licensed commissioners [~~members~~] shall be embalmers. Four (4) commissioners [~~members~~] must be representatives of the general public who are not regulated under this Act.

(2) The commissioners [~~members of said Board~~] shall be appointed by the Governor, by and with the consent of the Senate for staggered terms of six (6) years. Each commissioner [~~member~~] shall be subject to removal by the Governor for neglect of duty, incompetence, or fraudulent or dishonest conduct. The Governor shall remove from the commission [~~Board~~] any commissioner [~~member~~] whose license to practice funeral directing and/or embalming has been voided, revoked or suspended. Any vacancy in an unexpired term shall be filled by appointment of the Governor for the unexpired term. No commissioner [~~member of the Board~~] shall be appointed for more than one (1) full term of service.

(3) A commissioner [~~member of the Board~~] or an employee of the commission [~~State Board of Morticians~~] who carries out the functions of the commission [~~Board~~] may not:

(a) be an officer, employee, or paid consultant of a trade association in the funeral industry;

(b) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the funeral industry; or

(c) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the commission [~~Board~~] unless notice and an opportunity to participate is given to all parties to the proceeding, if the commissioner [~~member~~] or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(4) Commissioners [~~Members of the Board~~], except those commissioners [~~members~~] who are duly licensed embalmers or funeral directors, may not have personally, nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in funeral establishments as officers, directors, partners, owners, employees, attorneys, or paid consultants of the funeral establishments or otherwise.

(5) No person [~~member~~] shall be appointed to the commission [~~Board~~] who is an officer or employee of a corporation or other business entity controlling or operating, directly or indirectly, more than three funeral establishments, if another commissioner [~~member of the Board~~] is also an officer or employee of the same corporation or other business entity.

(6) A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities for compensation in or on behalf of a profession related to the operation of the commission, may not act as the general counsel to the commission [~~Board~~] or serve as a commissioner [~~member of the Board~~].

(7) Appointments to the commission [~~Board~~] shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(8) Each commissioner [~~member of the Board~~] shall be present for at least one-half of the regularly scheduled meetings held each year by the commission [~~Board~~]. The failure of a commissioner [~~member~~] to meet this requirement automatically removes that commissioner [~~the member~~] from the commission [~~Board~~] and creates a vacancy on the commission [~~Board~~].

B. Each commissioner [~~The members of said Board~~], before entering upon the [~~their~~] duties of office, shall take and subscribe to the oath of office prescribed for other state officials, which oath shall be filed in the office of the Secretary of State, after having been administered under proper authority. Each person appointed to the commission [~~Board~~] shall be furnished with a certificate of appointment by the Governor which shall bear evidence of the taking of oath of office.

C. The commission [~~Board~~] shall meet in Austin, Texas, in regular session at least two (2) times each year for the transaction of business. Examination for funeral directors and embalmers shall be held at least once during each year at such times and places as the commission [~~Board~~] may designate and give due notice thereof. Special meetings or hearings may be held at such time and place as may be determined by and upon call of the Chairman, Vice-chairman, [President; Vice-President] or three (3) commissioners [~~members of the Board~~].

D. The commission [~~Board~~] shall elect, after thirty (30) days' written notice is given to the commissioners [~~members~~], a Chairman, Vice-chairman, [President; Vice-President;] and Secretary from the commissioners [~~members of the said Board~~] who shall serve one (1) year, or until their successor shall be elected and qualified in cases of resignation or death. In the absence of an Executive Director [~~Secretary~~], the Secretary shall be bonded to the State of Texas in a sum equal to the maximum annual anticipated receipts of the commission [~~Board~~] and any premium payable for such bond shall be paid from the funds of the commission [~~Board~~]; likewise, the commission [~~Board~~] will require a bond of the Executive Director [~~Secretary~~], if any, and such bond shall be deposited with the State Auditor of the State of Texas. The Chairman [~~President~~] of the commission [~~Board~~] shall preside at all meetings of the commission [~~Board~~] unless otherwise ordered, and he shall exercise all duties and performances incident to the office of Chairman [~~President~~] of the commission [~~Board~~], and in his absence the Vice-chairman [~~Vice-President~~] shall preside. A majority of the commissioners [~~membership of the Board~~] shall constitute a quorum for the transaction of business.

E. The commission [~~Board~~] shall make an annual report covering the work of the commission [~~Board~~] for the preceding fiscal year, and such report shall be filed with the Governor and shall include:

1. An itemized account of money received and expended and the purpose therefor which has been duly certified by the State Auditor;
2. The names of all duly licensed funeral directors, embalmers, and funeral establishments. A copy shall be filed with the Secretary of State for permanent record, a certified copy of which, under the hand and seal of the Secretary of State, shall be admissible as evidence in all courts; and
3. A description of the activities of the commission [~~Board~~] during the preceding fiscal year.

F. The commission [~~Board~~] shall preserve a record of its proceedings in a book kept for that purpose.

G. The commission [~~Board~~] shall keep a permanent, alphabetical record of all applications for licenses and the action thereon. Such records shall also show, at all times, the current status of all such applications and licenses issued.

H. The commission [~~Board~~] may employ such inspectors, and clerical and technical assistants, legal counsel, including an Executive Director [~~Secretary~~], as may be determined by it to be necessary to carry out the provisions of this Act, and the terms, conditions and expenses of such employment shall be determined by the commission [~~Board~~].

I. Each commissioner [~~Membership of the Board~~] shall be reimbursed for necessary traveling expenses incident to attendance upon the business of the commission [~~Board~~], and in addition thereto, each shall receive a per diem allowance of Fifty Dollars (\$50) for each day actually spent by such commissioner [~~member~~] upon attendance to the business of the commission [~~Board~~], not to exceed sixty (60) days within a calendar year. The Secretary, in the absence of an Executive Director [~~Secretary~~], notwithstanding membership on the commission [~~Board~~], shall receive and be paid a salary for the time he devotes to the business of the commission [~~Board~~], and the amount and method of payment shall be fixed by the commission [~~Board~~] and in addition thereto, he shall receive necessary traveling expenses incurred in the performance of such duty; provided, however, he shall not be paid a per diem allowance during the time he is compensated on a salary basis; and provided that all such expenses, per diem allowance and compensation shall be paid out of the receipts of the commission [~~Board~~]. All fees and other funds received by the commission [~~Board~~] shall be deposited in the State Treasury to the credit of the General Revenue Fund. No claim for traveling expenses or per diem allowance shall be allowed or paid unless the claim be in writing and signed by the claimant under oath.

J. Except as otherwise provided by law, all records of the commission [~~Board~~] shall be open to inspection by the public during regular office hours.

K. All meetings of the commission [~~Board~~] shall be open and public.

L. The commission [~~Board~~] shall prescribe the form of the official application blank. It shall notify the proprietor of each licensed funeral establishment in this state that any person who seeks employment as a funeral director or embalmer must fill in this application blank, and that the person receiving the application must mail a copy of the official form to the commission [~~Board~~]. The commission [~~Board~~] shall inform the prospective employer of the status of the applicant's license to engage in the activity he proposes.

M. The commission [~~Board~~] may adopt such administrative procedures as may be desirable to effect the intent of the provisions of this Section.

N. The Texas Funeral Service Commission [~~State Board of Morticians~~] is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the commission [~~board~~] is abolished and this Act expires September 1, 1991.

O. The commission [~~Board~~] is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

P. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the commission [~~Board~~] statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the commission [~~Board~~] receives the committees' statements.

SECTION 3. Subsections A, B, C, D, E, F, H, and I, Section 3, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), are amended to read as follows:

A. The commission [~~Board~~] is hereby authorized and empowered and it shall be its duty to prescribe and maintain a standard of proficiency, character and qualifications of those engaged or who may engage in the practice of a funeral director or embalmer and to determine the qualifications necessary to enable any person to lawfully practice as a funeral director, to embalm dead human bodies, and to collect the fees therefor. The commission [~~Board~~] shall examine all applicants for

funeral directors' and embalmers' licenses and for apprenticeship licenses and shall issue the proper license to all persons qualified and who meet requirements herein prescribed.

B. The minimum requirements for the issuance of licenses by this commission [Board] to practice funeral directing and/or embalming in Texas are as follows, to wit:

1. For a license to practice funeral directing: the applicant shall be found by the commission [Board] to be not less than eighteen (18) years of age, a resident of the State of Texas, having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this commission [Board], having served as an apprentice for at least one (1) year under the personal supervision and instruction of a licensed funeral director and having satisfied the commission [Board] through written examination as to his proficiency by examination on the subjects of: (a) the art and technique of funeral directing; (b) signs of death; (c) the manner by which death may be determined; (d) sanitation; (e) hygiene; (f) mortuary management and mortuary law; (g) business and professional ethics; (h) laws applicable to vital statistics pertaining to dead human bodies; (i) local, state, and federal rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science. Not later than the 30th day after the day on which a person completes an examination administered by the commission [Board], the commission [Board] shall send to the person his examination results. If requested by a person who fails the examination, the commission [Board] shall send to the person not later than the 30th day after the day on which the request is received by the commission [Board] an analysis of the person's performance on the examination.

2. For a license to practice embalming: the applicant shall have been found by the commission [Board] to be not less than eighteen (18) years of age, a resident of the State of Texas, having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this commission [Board], having served as an apprentice for one (1) year under the personal supervision of a licensed embalmer, and having satisfied the commission [Board] as to his proficiency through written and practical examination on the subjects of: (a) anatomy of the human body; (b) the cavities of the human body; (c) the arterial and venous system of the human body; (d) blood and discoloration; (e) bacteriology and hygiene; (f) pathology; (g) chemistry and embalming; (h) arterial and cavity embalming; (i) restorative art; (j) disinfecting; (k) embalming special cases; (l) contagious and infectious diseases; (m) mortuary management; (n) care, preservation, transportation and disposition of dead human bodies; (o) laws applicable to vital statistics pertaining to dead human bodies; (p) sanitary science; (q) local, state, and federal rules and laws relating to the care and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science. Not later than the 30th day after the day on which a person completes an examination administered by the commission [Board], the commission [Board] shall send to the person his examination results. If requested in writing by a person who fails the examination, the commission [Board] shall send to the person not later than the 30th day after the day on which the request is received by the commission [Board] an analysis of the person's performance on the examination.

C. The commission [Board] is hereby authorized and empowered and it shall be its duty to approve a course of instruction to be given by any college of mortuary science or recognized school of higher learning that desires to be approved by the

commission [Board]. And it shall be the duty of the commission [Board] to examine and supervise the activities of an accredited school or college of mortuary science so as to insure that said college or school is meeting the requirements of the commission [Board].

D. It shall be the duty of the commission [Board] to prescribe and supervise the course of instruction received by an apprentice while serving his or her apprenticeship, consistent with the following requirements to establish such an apprenticeship registration procedure:

1. Apprenticeship for embalmer: A license to practice the science of embalming shall not be issued unless and until the applicant therefor has served an apprenticeship period of not less than twelve (12) consecutive months under the personal supervision and instruction of a licensed embalmer and has successfully completed all requirements of apprenticeship. The only exception to this requirement shall be in the case of an applicant under reciprocity.

(a) Any person, eighteen (18) years of age or more, who desires to practice the science of embalming in this state, files application therefor, meets the requirements of the law and this commission [Board], and possesses such qualification to enter into apprenticeship training, may be registered as an apprentice. Apprenticeship for a license to practice the science of embalming must be served by the person after graduation from a school or college of mortuary science. An applicant shall pay a registration fee at the time he requests such apprenticeship registration.

(1) An applicant for a license to practice the science of embalming who attains a grade of 70% or higher on the written examination given by the commission [Board] upon payment of a registration fee shall be registered as an apprentice within six (6) months of such examination.

(b) Each registered apprentice embalmer shall be issued a certificate of apprenticeship or other means of apprenticeship identification by the commission [Board] to be served in the State of Texas. During the period of apprenticeship he shall assist in embalming a minimum of sixty (60) dead human bodies, six (6) of which bodies the apprentice shall embalm after the first six months of the apprenticeship without aid but in the immediate presence and under the personal supervision of an embalmer duly and currently licensed in the State of Texas. No more than two (2) apprentices may receive credit due for work on any one body.

(c) An apprentice embalmer must report within ten (10) days after the end of each month each separate case handled by him or with which he has assisted in handling. Each such report shall be certified by the licensee under whom the apprentice performed his work. Throughout the period of apprenticeship, the apprentice shall report on at least one (1) such case of embalming each calendar month, within the month. In any month in which he did not embalm at least one (1) case under the direction of a licensed embalmer, a report shall be made to the commission [Board] notwithstanding.

(d) The commission [Board] shall set the registration and examination fees in an amount that is reasonable and necessary for the administration of the registration and examination.

2. Apprenticeship for Funeral Director: The term of apprenticeship for a funeral director's license shall be a period of not less than twelve (12) months, and may be served concurrently with apprenticeship for an embalmer's license; however, apprenticeship must be served in twelve (12) consecutive months. A person desiring to become an apprentice funeral director shall make application to the commission [Board] on a form provided by the commission [Board], and if the commission [Board] desires, he shall appear before at least one (1) member of the commission [Board], or a designated representative thereof, for approval of his application, subject to review of it by the entire commission [Board]. An applicant must be not less than eighteen (18) years of age and have completed the educational

requirements prescribed for a funeral director, except an applicant for a funeral director's license may elect to serve a one-year apprenticeship prior to enrolling in a course of study in funeral directing prescribed by the commission [Board] and graduating from a school of embalming or college of mortuary science. Time spent as an apprentice while engaged in a prescribed course of study in funeral directing or as a student in a school of embalming or college of mortuary science may not be counted toward the required period of apprenticeship. The application for registration shall be sworn to and accompanied by a registration fee. If the application is accepted, an applicant will be issued a certificate of apprenticeship registration upon determination by the commission [Board] that his qualifications are satisfactory.

(a) An applicant for a funeral director's license and the examination therefor who has not completed one (1) year of apprenticeship prior to enrolling in a school of embalming or college of mortuary science shall be admitted to apprenticeship only in the event he shall have attained a grade of 70% or higher on the written examination given by the commission [Board], and the payment of a registration fee, whereupon he shall be registered as an apprentice. Provided, however, an applicant must register as an apprentice within six (6) months of such examination.

(b) An apprentice funeral director must report within ten (10) days after the end of each month each separate case with which he has assisted in handling. Each such report shall be certified to by the licensee under whom the apprentice performed the work. Throughout the period of apprenticeship the apprentice shall report on at least one (1) such case each calendar month, within the month. In any month within which he did not assist a funeral director in handling a funeral, a report shall be made to the commission [Board] notwithstanding.

(c) During the course of apprenticeship each apprentice shall assist a licensed funeral director in this state to prepare, other than by embalming, and to make final disposition of not less than sixty (60) dead human bodies, six (6) of which bodies the apprentice shall handle after the first six months of the apprenticeship. No more than two (2) apprentices may receive credit for work done on any one body.

(d) The commission [Board] shall set the registration and examination fees in an amount that is reasonable and necessary for the administration of the registration and examination.

3. Annual renewal apprenticeship certificate: Each certificate of apprenticeship issued by the commission [Board] to an apprentice embalmer or apprentice funeral director must be renewed on the first day of January of each year and will be renewed upon payment by the apprentice of a renewal fee, provided the apprentice has observed the rules and regulations of the commission [Board] with respect to his apprenticeship. Notice shall be mailed, during the month of December each year, to each registered apprentice at his last known address, notifying him that the renewal fee is due. If a registered apprentice fails to pay the annual renewal fee by the due date, the commission [Board] shall impose a late payment penalty equal in amount to the license renewal fee. ~~If the apprentice is delinquent in payment of the renewal fee~~ and ~~[penalty for more than thirty (30) days, the Board]~~ shall suspend his certificate for nonpayment and ~~[shall]~~ notify such apprentice of such suspension ~~[by registered mail, addressed to his last known address]~~. If the said renewal fee and penalty are not then paid within ninety (90) days from the date of such notice of suspension, the commission [Board] shall then cancel such certificate. Provided, however, after an apprentice certificate has been cancelled, the apprentice may apply for reinstatement within eighteen (18) months from the date such apprentice certificate was cancelled and the commission [Board] may reinstate said apprentice provided he meets all other requirements of the commission [Board] and pays the license fee and a late payment penalty equal in amount to the license fee for the period of the cancellation. A certificate of apprenticeship may not be

renewed for more than a total period of five (5) years from the date of its issuance. It is provided that the registration fee of any apprentice who is actively engaged in the military service of the United States may be remitted for the duration of such service or for such fees and such time as the commission [Board] may deem advisable upon presentation of proper evidence required by the commission [Board]. The commission [Board] shall set the renewal fee and the penalty in an amount that is reasonable and necessary for the administration of this Act. An apprentice certificate that has been cancelled or suspended or has lapsed for a period of five (5) years or more may be reinstated only if the applicant takes and passes the applicable apprenticeship examination under Subdivision 1 or 2 of this subsection. The commission may adopt rules relating to the reinstatement of such an apprenticeship certificate.

3a. The commission [board] by rule shall adopt a system under which certificates expire on various dates during the year. The date for sending notice that payment is due and the date for suspension due to nonpayment shall be adjusted accordingly. For the year in which the certificate expiration date is changed, certification fees payable on January 1 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certification fee which is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date the total renewal fee is payable.

4. Notification of the commission [Board] upon entry into apprenticeship: When an apprentice enters the employ of a licensed embalmer or funeral director, he shall immediately notify the commission [Board] of the name and place of business of the licensed embalmer or funeral director whose service he has entered and the name of the funeral director or embalmer under whom he will train, and such notification shall be signed by the embalmer or funeral director in each case. If at any time thereafter such apprentice leaves the employ of the licensed embalmer or funeral director whose services he has entered, the said licensed embalmer or funeral director shall give to such apprentice an affidavit showing the length of time he has served as an apprentice with him and the number of cases handled while so employed; the original of said affidavit shall be filed with the commission [Board] and made a matter of record, and a copy shall be furnished to the apprentice. The commission [Board] shall furnish report forms to be used by each apprentice.

(a) Any apprentice registration shall be cancelled, and the applicant required to re-register, including paying the required fees, for failure to pass the commission's [Board's] examination of such apprentice after only part of the apprenticeship has been completed. Provided, however, such applicant shall be given credit for apprenticeship time served under the cancelled license in any new registration.

5. A certificate of apprenticeship may be suspended or revoked as provided and set forth in Section 3, subsection H.

E. Any person engaged or desiring to engage in the practice of embalming or funeral directing in this state, in connection with the care and disposition of dead human bodies, shall make written application to the commission [Board] for a license accompanying same with an application fee. The license or licenses when issued shall be signed by a majority of the commission [Board] and shall authorize the licensee to practice the science of embalming and/or funeral directing. All licenses shall be registered in the office of the County Clerk in any county in which the holder thereof resides and practices embalming and/or funeral directing and shall be displayed conspicuously in the place of business. Every licensed embalmer and/or funeral director who desires to continue his practice shall biennially pay to the Secretary of the said commission [Board] a registration fee for the renewal of each funeral director's license and each embalmer's license. Said license shall become due and payable biennially on the date set by rule of the commission [Board].

~~day of May~~], and the commission shall ~~[Board will]~~ give written notice not later than the thirtieth (30th) day before that date ~~[on or before April 1st, of each year]~~ that the license fees are due and payable. If a licensee fails to pay the biennial registration fee by the due date, the commission ~~[Board]~~ shall charge the delinquent licensee a late payment penalty equal in amount to the registration fee, and shall suspend the license and notify the licensee ~~[by certified mail, return receipt requested;]~~ of such suspension. If the licensee does not pay the registration fee and penalty before the ninetieth (90th) day after the date on which the commission ~~[Board]~~ declared the license suspended, as provided herein, the license shall be automatically cancelled and the commission ~~[Board]~~ may thereafter refuse to reinstate the licensee until the applicant has passed a regular examination for license as provided in this Act and has paid the license fee and a late payment penalty equal in amount to the license fee for the period of the cancellation. If any license issued under this Act shall be lost or destroyed, the holder of any such license may present his application for duplicate license to the commission ~~[State Board of Morticians]~~, on a form to be prescribed by the commission ~~[Board]~~, together with his affidavit of such loss or destruction, and that he is the same person to whom such license was issued, and such other information concerning its loss or destruction as the commission ~~[State Board of Morticians]~~ shall require, and shall, upon payment of a duplicate license fee, as determined by the commission ~~[Board]~~, be granted a duplicate license. The commission ~~[Board]~~ shall adopt rules to carry out the biennial licensing system.

1. Any license that has been cancelled, suspended or lapsed for a period of five (5) years or more may be reinstated only after the applicant shall have passed a written and practical examination by the commission ~~[Board]~~ on embalming and/or a written examination on funeral directing.

2. The commission ~~[board]~~ by rule shall adopt a system under which licenses expire on various dates during the year. All dates for sending notice regarding payment of fees and dates for license suspension for nonpayment shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees payable ~~[on May 31]~~ shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

3. The commission ~~[Board]~~ shall set the application fee, license fee, registration fee, and duplicate license fee in an amount that is reasonable and necessary for the administration of this Act.

F. (1) On a reciprocal basis with other states, countries, or territories the commission ~~[Board]~~ may issue, without examination, a license to an applicant who has a corresponding certificate or license issued by another state, country, or territory having standards for the license that are at least substantially equivalent to those of this state and who pays a reciprocal license fee. The person's application shall be accompanied by an affidavit made by the Chairman ~~[President]~~ or Secretary of the commission ~~[Board of Mortician Examiners]~~ which issued the license, or by a duly constituted registration officer of the state, country, or territory by which the certificate or license was granted, and on which the application for registration in Texas is based, reciting that the accompanying certificate or license has not been cancelled, suspended or revoked, and that the statement of the qualifications made in the application for a license in Texas is true and correct. Applicants for a license under the provisions of this Act shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of such application, stating that the license, certificate, or authority under which the applicant practiced as a funeral director or embalmer in the state, country, or territory from which the applicant removed, was at the time of such removal in full force and effect and not cancelled or suspended or revoked. Said application shall also state that the

applicant is the identical person to whom the said certificate, license, or commission was issued, and that no proceeding has been instituted against the applicant for the cancellation, suspension or revocation of such certificate or license in the state, country, or territory in which the same was issued; and that no prosecution is pending against the applicant in any state or federal court for any offense which, under the laws of the State of Texas, is a felony, or is a misdemeanor related to the practice of embalming or funeral directing. The commission ~~[Board]~~ shall set the reciprocal license fee in an amount that is reasonable and necessary for the administration of this Act.

(2) Licenses granted under this subsection shall be on the following basis: Before a license is granted, the applicant shall receive a temporary permit good for one (1) year from date of issuance by the commission ~~[Board]~~. At the end of one (1) year, the holder of said temporary permit shall again be considered by the commission ~~[Board]~~, and if his application for license has been maintained and he meets all other requirements, the commission ~~[Board]~~ may grant said applicant a license.

H. The commission ~~[State Board of Morticians]~~ may seek appropriate injunctive relief against a funeral establishment, licensed embalmer, or funeral director who fails to comply with any provision of this Act. This Act does not affect any remedy or enforcement power under other laws. The commission may assess an administrative penalty against a licensed individual or establishment in the manner provided by Section 6G of this Act, or as the result of a hearing conducted in the manner provided by Section 6C of this Act. The commission may assess an administrative penalty and ~~[State Board of Morticians]~~ may revoke, suspend, or place on probation any licensed funeral director and/or embalmer, or apprentice and may refuse to license or admit persons to examination for any of the following reasons all of which are offenses as provided in Section 6A of this Act:

1. The presentation to the commission ~~[Board]~~ of any license, certificate, or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination;

2. Conviction of a crime of the grade of a felony or of a misdemeanor that is related to the practice of embalming or funeral directing;

3. Being unfit to practice as a funeral director and/or embalmer by reason of insanity and having been adjudged by a court of competent jurisdiction to be of unsound mind;

4. The use of any statement that misleads or deceives the public, including but not limited to false or misleading statements regarding (1) any legal, religious, or cemetery requirement for funeral merchandise or funeral services, (2) the preservative qualities of funeral merchandise or funeral services in preventing or substantially delaying natural decomposition or decay of human remains, (3) the airtight or watertight properties of a casket or outer enclosure, or (4) representations as to licensed personnel in the operation of a funeral establishment;

5. The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use any license, certificate, or transcript of license or certificate, in or incident to an application to the commission ~~[Board of Morticians]~~ for license to practice as a funeral director and/or embalmer;

6. Altering, with fraudulent intent, any funeral director and/or embalmer license, certificate, or transcript of license or certificate;

7. The use of any funeral director and/or embalmer license, certificate, diploma, or transcript of any such funeral director and/or embalmer license, certificate, or diploma, which has been fraudulently purchased, issued, counterfeited, or materially altered;

8. The impersonation of, or acting as proxy for, another in any examination required by this Act for a funeral director and/or embalmer license;

9. The impersonation of a licensed funeral director or embalmer as authorized hereunder, or permitting, or allowing another to use his license, or certificate to practice as a funeral director or embalmer in this state;

10. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a decedent, in proximity to a deceased person whose body has not yet been interred or otherwise disposed of; or the indecent exposure of a dead human body;

11. Taking custody of, embalming, or refusing to promptly surrender a dead human body to a person or his agent authorized to make funeral arrangements for the deceased or embalming a body without the express written or oral permission of a person authorized to make funeral arrangements for the deceased or without making a documented reasonable effort over a period of at least two (2) hours to obtain the permission;

11A. Attempting without proper authority to embalm a dead human body as evidenced by the use of sutures or mechanical devices in the posing of any facial feature and:

(A) the making of any incision on the body; or

(B) the raising of any circulatory vessel of the body;

12. Wilfully making any false statement on a certificate of death;

13. Employment directly or indirectly of any apprentice, agent, assistant, embalmer, funeral director, employee, or other person on a part or full-time basis, or on commission, for the purpose of soliciting individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director or embalmer;

14. Presentation of false certification of work done as an apprentice on apprenticeship records;

15. Unfitness by reason of present drug addiction;

16. Whenever a licensee, apprentice, or any other person, whether employee, agent or representative, or one in any manner associated with a funeral establishment shall engage in solicitation as defined in this Act;

17. Failure by the Funeral Director in Charge to provide licensed personnel for [attendance,] direction[;] or personal supervision for a "first call," as that term is defined in this Act;

18. Failure by a funeral director or embalmer to inform customers by a written notice on or near the casket of the different colors in which the three least expensive caskets displayed are available; or failure by the funeral director or embalmer to provide a casket in an available color requested by a customer if the customer has expressed an intent to purchase the casket and if the casket can be obtained from regular commercial suppliers under normal delivery conditions within twelve (12) hours;

19. Performing acts of funeral directing or embalming, as those terms are defined in this Act, which are outside the licensed scope and authority of the licensee;

20. Engaging in fraudulent or deceptive conduct in providing funeral services or merchandise to a consumer;

21. Statement or implication by a funeral director or embalmer that a customer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased;

22. Failure by any person arranging for funeral services or merchandise to:

(A) inform a customer or prospective customer of the availability of a retail price list;

(B) provide a retail price list to the customer or prospective customer for that person to keep; or

(C) explain to the customer or prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before the presentation of the retail price list to that person;

23. Failure by any person arranging for funeral services or merchandise to provide each customer a written memorandum itemizing the cost of funeral services and funeral merchandise selected by the customer; however, if the customer selects a package arrangement based on unit pricing, the itemization requirement is satisfied by providing a written memorandum that itemizes the discount provided by the package arrangement. The use of unit pricing does not preclude the presentation of the retail price list as required by Subdivision 22 of this subsection;

24. Restricting, hindering, or attempting to restrict or hinder (1) the advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers, or (2) agreements for funeral services between any consumer or group of consumers and funeral directors or embalmers;

25. Failure to retain and make available to the commission [~~State Board of Morticians~~], upon request, copies of all price lists, written notices, and memoranda of agreement required by this article for two years after the date of their distribution or signing;

26. Violation of this Act, or of any rule, regulation, or order revoking, suspending, or probating a license issued under this Act; and

27. Dishonest conduct or gross negligence in the practice of embalming or funeral directing that is likely to deceive, defraud, or otherwise injure the public.

1. The commission [~~Board~~] may issue such rules and regulations as may be necessary or desirable to effect the intent of the provisions of this Section.

SECTION 4. Subsections A, C, D, E, F, and G, Section 4, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), are amended to read as follows:

A. All funeral establishments shall be licensed by the commission [~~Board~~]. All licenses shall expire at midnight on September 30th of each year. Funeral establishments created after the effective date of this Act shall apply for a license, and upon satisfaction to the commission [~~Board~~] that this Section has been complied with and upon receipt of the licensing fee, an initial license shall be duly issued to such new establishments. Not later than thirty (30) days prior to the expiration date of licenses, the commission [~~Board~~] shall cause to be issued notification in writing by mail to each licensed funeral establishment that a renewal fee must be paid not later than September 30th before such license shall be renewed, and upon due receipt of such fees all existing licenses shall be considered automatically renewed. Any establishment which fails to pay its license renewal fee by the due date is subject to a late payment penalty equal in amount to the license renewal fee, and if the delinquency is more than thirty (30) days, the establishment shall not be permitted to operate as a funeral home until it has applied for and has been granted a new license as in the case of original applications and licenses for new funeral establishments. The commission [~~Board~~] shall set the funeral establishment license fee, the renewal fee, and the penalty in an amount that is reasonable and necessary for the administration of this Act.

C. Each funeral establishment shall be required to have a physical plant, equipment and personnel consisting of the following:

1. Some facilities in which funeral services may be conducted;
2. A physical plant which meets building standards and fire safety standards of the state and of the municipality in which the establishment is located;
3. Access to rolling stock consisting of at least one motor hearse;
4. A preparation room containing an operating table, sewer facilities, hot and cold running water, and other facilities necessary to comply with the sanitary code of the state and the municipality in which the room is located;

5. A display containing sufficient merchandise to permit reasonable selection, including five (5) or more adult caskets, provided that the least expensive casket offered for sale by a funeral establishment must be visibly displayed without concealment in the same general manner as other caskets are displayed;

6. Sufficient licensed personnel who will be available to conduct the operation of the funeral establishment;

7. A physical plant located at a fixed place, and not located on any tax-exempt property or cemetery; and

8. A physical plant which meets the health standards or health ordinances of the state and of the municipality in which the establishment is located.

It is expressly provided, however, that an establishment which functions solely as a commercial embalmer, as that term is defined in this Act, shall have a commercial embalmers establishment license, but shall not be required to meet the requirements of sub-sections 1 and 5 of this paragraph C.

D. 1. The commission [Board] may initiate action against a funeral establishment or in regard to the license of a funeral establishment [only] upon the following grounds:

(a) Failure of a funeral establishment to substantially comply with the provisions of Subsection B or C of this Section.

(b) Conducting or operating a funeral establishment in a manner which, in the discretion of the commission [Board], after applying contemporary community standards, is found to be offensive to the common conscience and moral standards of the community where the funeral establishment is licensed or where such offensive conduct occurred.

(c) The use of any advertising statement of a character which misleads or deceives the public, or use, in connection with advertisements, the names of persons who do not hold a license as a funeral director or embalmer and represent them to be so licensed;

(d) Whenever a licensee, apprentice, or any other person, whether employee, agent or representative, or one in any manner associated with a funeral establishment shall solicit business or offer any inducement, pecuniary or otherwise, for the purpose of securing or attempting to secure business for such funeral establishment, unless such solicitation is made pursuant to a permit issued under Chapter 512, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 548b, Vernon's Texas Civil Statutes).

(e) Failure by the funeral director in charge to provide licensed personnel for [attendance,] direction[;] or personal supervision for a "first call" as that term is defined in this Act.

Provided, however, with respect to alleged violations of Subsection D-1(b), (c), (d), and (e), the commission [Board] may not initiate action against a funeral establishment or in regard to the license of a funeral establishment when the ground or grounds of complaint are based on the conduct of employees, agents or representatives of such establishment performed outside the scope and authority of their employment or contrary to the instructions of the funeral establishment and its management. The commission may initiate such an action if those persons are acting within the scope and authority of their employment.

2. As to asserted violations of provisions of this Section, the commission [Board] shall have the following powers, rights and duties:

(a) The commission [Board] may, in any case, require a sworn statement setting forth matter complained of as a condition to taking further action.

(b) The commission [Board] shall cause an investigation to be made whenever a complaint is filed with or by the commission [Board].

(c) The commission [Board] may assess an administrative penalty and may revoke or suspend a funeral establishment or a commercial embalming

establishment license or may place a licensee on probation for a violation of this Act or of a rule or regulation adopted under this Act. The commission may also assess an administrative penalty in the manner provided by Section 6G of this Act for such a violation.

E. Each funeral establishment shall designate to the commission [Board] a funeral director in charge, and such funeral director in charge shall be directly responsible for the funeral directing and embalming business of the licensee. Any change or changes in such designation shall be given to the commission [Board] promptly.

F. The commission [Board] may issue such rules and regulations as shall comply with and shall effect the intent of the provisions of this Section.

G. Any premises on which funeral directing or embalming is practiced shall be open at all times to inspection by any agent of the commission [Board] or by any duly authorized agent of the state or of the municipality in which the premises are located. Each licensed funeral establishment shall be thoroughly inspected at least once each year by an agent of the commission [Board] or by an agent of the state or a political subdivision thereof whom the commission [Board] has authorized to make inspections on its behalf. A report of this annual inspection shall be filed with the commission [Board].

SECTION 5. Section 5, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. RULES AND REGULATIONS. A. The commission [Board] may adopt rules and regulations and prescribe forms necessary to administer this Act.

B. Whenever it is provided in this Act that the commission [Board] may or shall issue any rules and regulations, such rules and regulations thereunder proposed shall be effective only after due notice and hearing.

SECTION 6. Section 6, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. REVOCATION, CANCELLATION OR SUSPENSION OF LICENSES OF FUNERAL DIRECTORS, EMBALMERS AND APPRENTICES.

(a) The commission [State Board of Morticians] shall have the right to cancel, revoke, or suspend or place on probation the license of any individual person licensed under this Act as provided by subparagraph H of Section 3 above.

(b) Proceedings under this Section shall be initiated by filing charges with the commission [State Board of Morticians] in writing and under oath. Said charges may be made by any person or persons. The Chairman of the commission [President of the State Board of Morticians] shall set a time and place for hearing. Upon application, the commission [Board] may reissue a license to practice as a funeral director or embalmer to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such a manner and form as the commission [Board] may require.

(c) The commission [State Board] shall have the power to appoint committees from the commissioners [membership]. The [duties of any] committees [appointed from the State Board of Morticians membership] may consider such matters pertaining to the enforcement of this Act as shall be referred to such committees, and they shall make recommendations to the commission [State Board of Morticians] with respect thereto. The commission [State Board of Morticians] shall have the power, and may delegate the said power to any committee, to issue subpoenas[;] duces tecum, and to compel the attendance of witnesses, the production of books, records and documents, to administer oaths, and to take testimony concerning all matters within its jurisdiction. The determination shall be

founded on sufficient legal evidence to sustain it. The commission [~~State Board of Morticians~~] shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The commission [~~State Board of Morticians~~] shall be represented by the Attorney General and/or the County or District Attorneys of this state, or counsel designated and empowered by the commission [~~Board~~]. Before entering any order cancelling, suspending, refusing to renew, or revoking a license to practice as a funeral director and/or embalmer, the commission [~~Board~~] shall hold a hearing in accordance with the procedure as set forth in this Act.

(d) The provisions of this Section shall not apply to funeral establishments or licenses pertaining to funeral establishments.

SECTION 7. Section 6B, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6B. CERTIFICATE FOR FOREIGN STUDENTS. Any citizen of a country other than the United States who has completed a full course of mortuary science at a commission-approved [~~Board-approved~~] college in Texas, may upon application to the commission [~~State Board~~], and after payment of the same examination fee required of others, be given the commission [~~Board~~] examinations in either embalming, funeral directing or both, and, upon successfully making the minimum grades required of other applicants, may be awarded a "Certificate of Merit" by the commission [~~Board~~]. Such certificate shall in no manner authorize a holder thereof to practice embalming and/or funeral directing in this state unless the holder is otherwise licensed as an embalmer and/or funeral director under the provisions of this Act.

SECTION 8. Section 6C, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6C. ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. (a) A person who is denied a license or certificate by the commission [~~Board~~] is entitled to a hearing before the commission [~~Board~~] in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), if the person requests the hearing in writing.

(b) A proceeding conducted by the commission [~~Board~~] relating to the suspension or revocation of a license or certificate is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review of the proceeding is subject to the substantial evidence rule and is governed by the Administrative Procedure and Texas Register Act.

SECTION 9. Section 6D, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6D. COMPLAINTS. (a) The commission [~~Board~~] shall investigate and keep an information file about each complaint received by the commission [~~Board~~] relating to a funeral director, embalmer, apprentice, or funeral establishment.

(b) The commission [~~Board~~] shall include in each information file a description of the complaint, the date on which the complaint was filed, the name of the complainant, a description of any information obtained by the commission [~~Board~~] after investigating the complaint, a description and date of any formal actions taken by the commission [~~Board~~] relating to the complaint, a description of the current status of the complaint, and other information that the commission [~~Board~~] considers appropriate.

(c) The commission [Board], at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

(d) The information file, except for information in the file obtained by the commission [Board] after investigating the complaint, is public information. The information obtained after investigating the complaint is not public information.

(e) If a person files a complaint with the commission [Board] relating to a licensed funeral director, embalmer, or funeral establishment, the commission [Board] shall furnish to the person an explanation of the remedies that are available to the person under this Act and information about appropriate state or local agencies or officials with which the person may file a complaint.

(f) The commission [Board] shall employ or contract for the services of one or more persons to investigate complaints of consumer interest and other complaints received by the commission [Board]. To serve in this position in a contractual capacity, a person must be licensed as a private investigator under state law and must not be subject to regulation under this Act. To serve in this position as an employee of the commission, a person must meet all requirements for licensure as a private investigator, but is not required to obtain a surety bond or liability insurance. A person employed by the commission in this capacity must not be subject to regulation under this Act.

SECTION 10. Section 6E, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6E. CONSUMER INFORMATION. (a) The commission [Board] shall prepare information of consumer interest explaining matters relating to funerals, describing the regulatory functions of the commission [Board], and describing the commission's [Board's] procedures by which consumer complaints are filed with and resolved by the commission [Board].

(b) The commission [Board] shall disseminate the information to the general public.

SECTION 11. Section 6F, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6F. EX PARTE COMMUNICATIONS. The commissioners [members] and the employees of the commission [Board] are subject to the provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), relating to ex parte communications.

SECTION 12. Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended by adding Section 6G to read as follows:

Sec. 6G. ADMINISTRATIVE PENALTY. (a) If the commission determines that a person or establishment regulated under this Act has violated this Act or a rule adopted under this Act in a manner that constitutes a ground for a license suspension under Subsection H, Section 3, or Section 4 of this Act, the commission may assess an administrative penalty against that person or establishment as a result of a hearing conducted in the manner provided by Section 6C of this Act or as provided by this section. If an administrative penalty is assessed after a hearing conducted under Section 6C of this Act, the commission shall follow the procedures described in Subsections (e) through (h) of this section.

(b) The commission may assess the administrative penalty in an amount not less than One Hundred Dollars (\$100) or more than Five Thousand Dollars (\$5,000) for each act of violation. In determining the amount of the penalty, the commission shall consider the seriousness of the violation.

(c) If, after examination of a possible violation and the facts relating to that possible violation, the commission concludes that a violation has occurred, the commission shall issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed and the amount to be assessed. Not later than the tenth (10th) day after the day on which the commission issues the preliminary report, the commission shall send a copy of the report to the person or establishment charged with the violation, together with a statement of the right of the person or establishment to a hearing relating to the alleged violation and the amount of the penalty.

(d) Not later than the twentieth (20th) day after the day on which the report is sent, the person or establishment charged either may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Failure either to request a hearing or to remit the amount of the penalty within the time provided by this subsection results in a waiver of a right to a hearing under this Act. If the person or establishment charged requests a hearing, the hearing shall be conducted in the manner provided by Section 6C of this Act. If it is determined after hearing that the person or establishment has committed the alleged violation, the commission shall give written notice to the person or establishment of the findings established by the hearing and the amount of the penalty, and shall enter an order requiring the person or establishment to pay the penalty.

(e) Not later than the thirtieth (30th) day after the day on which the notice is received, the person or establishment charged shall pay the administrative penalty in full, or, if the person or establishment wishes to contest either the amount of the penalty or the fact of the violation, remit the assessed amount to the commission for deposit in an escrow account. If, after judicial review, it is determined that no violation occurred or that the amount of the penalty should be reduced, the commission shall remit the appropriate amount to the person or establishment charged with the violation not later than the thirtieth (30th) day after the day on which the judicial determination becomes final.

(f) Failure to remit the amount of the administrative penalty to the commission within the time provided by Subsection (e) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(g) An administrative penalty owed under this section may be recovered in a civil action brought by the Attorney General at the request of the commission.

(h) A penalty collected under this section shall be deposited in the State Treasury to the credit of the general revenue fund.

SECTION 13. Section 7(b), Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The commission [~~Board~~] may file a complaint with the appropriate governmental authorities to begin prosecution of a person who commits an offense under Section 6A of this Act. The commission [~~State Board of Morticians~~] or any adversely affected party may sue a funeral establishment or licensed embalmer or funeral director who fails to comply with any provision of this Act for appropriate injunctive relief. This Act does not affect a remedy or enforcement power under other laws. Any person who practices as a funeral director, embalmer or apprentice in violation of any provisions of this Act shall be fined not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) or shall be imprisoned in the county jail for not more than thirty (30) days, or both. Each day of such practice shall constitute a separate offense.

SECTION 14. (a) The name of the State Board of Morticians is changed to the Texas Funeral Service Commission. Any reference in the law to the State Board of Morticians means the Texas Funeral Service Commission.

(b) All appropriations made by the Legislature for the use and benefit of the State Board of Morticians are available for the use and benefit of the Texas Funeral Service Commission.

(c) Before ordering or purchasing new paper or forms to reflect the name change, the Texas Funeral Service Commission shall use all papers and forms that are in the possession of the State Board of Morticians on the effective date of this Act.

SECTION 15. Section 12 of this Act, providing for the assessment of administrative penalties by the Texas Funeral Service Commission, applies only to a violation that occurs on or after the effective date of this Act.

SECTION 16. This Act takes effect September 1, 1987.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

COMMITTEE SUBSTITUTE SENATE BILL 741 ON SECOND READING

On motion of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 741, Relating to required disclosures in applications and written solicitations for revolving loan accounts and revolving triparty accounts.

The bill was read second time.

Senator Parmer offered the following amendment to the bill:

Amend **C.S.S.B. 741** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 15, Title 79, Revised Statutes (Article 5069-15.01, Vernon's Texas Civil Statutes), is amended by adding new subsections (n), (o), (p) and (q) to read as follows:

Art. 15.01. DEFINITIONS

(n) "Written solicitation" means a brochure, handout, or similar document which solicits the resident to apply for a revolving loan account, revolving tri-party account, or a charge card account, as defined in Article 15.06A, but the term excludes any solicitations included in a magazine, newspaper, periodical or other publication unless the solicitation includes an application.

(o) "Annual Percentage Rate" has the same meaning as that term has under federal Regulation Z, 12 C.F.R. Sec. 226.1 et seq.

(p) "Application" means a written form to be completed by a resident of this state and forwarded to a creditor in order to apply for a revolving loan account or revolving tri-party account or to apply for a charge card as defined in Article 15.06A of this Title.

(q) "Finance Charge" has the same meaning as that term has under federal Regulation 2.12 C.F.R. Sec. 226.1 et seq.

SECTION 2. Chapter 15, Title 79, Revised Statutes (Article 5069-15.01 et seq., Vernon's Texas Civil Statutes), is amended by renumbering and amending Art. 5069-15.06 as follows:

Art. 5069-15.12. [5069-15.06] COMPLIANCE WITH FEDERAL CONSUMER CREDIT PROTECTION ACT.

(a) Nothing in this chapter shall be construed to lessen [alter] any creditor's obligation to comply with the Federal Consumer Credit Protection Act.

(b) The provisions of Article 15.06, Article 15.06A and Article 15.06B of this Title do not apply to any revolving loan account, revolving tri-party account or charge card plan in which the creditor is required, pursuant to federal law, to disclose, in the application or written solicitation relating to such account or plan, terms of the credit being offered.

SECTION 3. Chapter 15, Title 79, Revised Statutes (Article 5069-15.01 et seq., Vernon's Texas Civil Statutes), is amended by adding a new Article 15.06 to read as follows:

Art. 5069-15.06. REQUIRED DISCLOSURES

(a) All applications and written solicitations relating to accounts covered by this chapter between a creditor, wherever located, and a customer who is a resident of this state shall set forth the following, when applicable, in legible, coherent, and commonly understood language that is appropriately captioned by its various sections and presented in meaningful sequence:

(1) The annual percentage rate or, if the rate may vary, a statement that it may do so and of the circumstances under which the rates may increase, any limitations on the increase and the effects of the increase;

(2) The date or occasion upon which the finance charge begins to accrue on a transaction;

(3) Whether an annual fee is charged and the amount of the fee.

SECTION 4. Chapter 15, Title 79, Revised Statutes (Article 5069-15.01 et seq. Vernon's Texas Civil Statutes), is amended by adding a new Article 15.06A to read as follows:

Art. 5069-15.06A DISCLOSURES FOR APPLICATIONS AND WRITTEN SOLICITATIONS FOR CHARGE CARD PLANS

(a) For purposes of this section, the term "charge card" means a card, plate or other credit device pursuant to which: (i) the charge card issuer extends credit primarily for the purchase of goods or services from other persons who are not affiliated with the charge card issuer, (ii) the credit is not subject to a finance charge and (iii) the holder of the charge card cannot automatically access credit which is repayable in installments. The term does not include any cards issued by a retail seller or credit card issuer, as those terms are defined in Article 6.01 of this Title.

(b) With respect to every charge card plan between a creditor, wherever located, and a customer who is a resident of this state, all applications and written solicitations for the charge card plan which are mailed or delivered or made available to the customer at a location in this state shall set forth the required disclosures as set forth in Article 15.06 of this Title.

SECTION 5. Chapter 15, Title 79, Revised Statutes, (Article 5069-15.01 et seq. Vernon's Texas Civil Statutes) is amended by adding a new Article 15.06B to read as follows:

Art. 5069-15.06B NOTICES

With regard to the accounts and charge card plans described in Article 15.06 and Article 15.06A in this Title, if a customer who is a resident of this state is offered the opportunity to enter into the account or charge card plan while present in any establishment located in this state but is not required to complete an application, the customer shall be given a notice prior to entering into the account or charge card plan. The notice shall set forth the required disclosures as set forth in Article 15.06 of this Title.

SECTION 6. Chapter 15, Title 79, Revised Statutes (Article 5069-15.01 et seq., Vernon's Texas Civil Statutes) is amended by amending Article 15.11 as follows:

Article 5069-15.11. PENALTIES

(a) The provisions of Chapter 8 of Subtitle 2 of this Title 79 shall apply to violations of this Chapter 15 except violations of Article 15.06, Article 15.06A and Article 15.06B of this Title.

(b) Violations of Article 15.06, REQUIRED DISCLOSURES, shall be subject to the provisions of Chapter 2 Subtitle 2, Article 2.03 and Article 2.04 of this Title and Chapter 8, Subtitle 2, Article 8.07 of this Title.

SECTION 7. Chapter 2, Title 79, Revised Statutes (Article 5069-2.02 Vernon's Texas Civil Statutes) is amended by adding Article 2.02(8) and Article 2.02(9) as follows:

Art. 2.02 CREATION OF THE OFFICE OF CONSUMER CREDIT COMMISSIONER

(8) The Consumer Credit Commissioner shall have the responsibility to promulgate a disclosure format to be used for purposes of compliance with Article 15.06, Article 15.06A and Article 15.06B of this Title.

(9) The Consumer Credit Commissioner shall publish an annual creditors' non-compliance report November 1. The report shall set forth the names of the creditors that the Commissioner knows, or reasonably believes, to have violated Article 15.06, Article 15.06A or Article 15.06B of this Title during the preceding 12 months.

SECTION 8. Chapter 8, Title 79, Revised Statutes (Article 5069-8.01 et seq., Vernon's Texas Civil Statutes) is amended by adding a new section Article 5069-8.07 as follows:

Article 5069-8.07

(a) Any person shall have an independent cause of action against a creditor violating the terms of Article 15.06, Article 15.06A or Article 15.06B of this Title.

(b) If the person is found by a court to have violated the terms of Article 15.06 of this Title, the court may assess a judgment against the creditor for no more than (\$500) five hundred dollars, the costs of the action and reasonable attorney's fees. If an action under this section is brought as a class action, and found maintainable as a class section, the total recovery for this class action or series of class actions, arising out of the failure by the creditor to comply with the required disclosures as set forth in Article 15.06, Article 15.06A and Article 15.06B, shall not be more than the lesser of (\$100,000) one hundred thousand dollars or 5% of the creditor's net worth plus the costs of the action and reasonable attorney's fees. There shall be no minimum recovery for individual class member.

(c) Actions under this section may be brought in the county in which the written solicitation was received or where the defendant resides at the time the action is filed. Such action may be brought within two years of the date of receipt of the written solicitation. No action shall be maintained under this section unless a person provides the creditor with written notice of the actual error or defect with the required disclosure.

(d) It is a defense to any cause of action brought under this section that the defendant followed the disclosure format promulgated by the Consumer Credit Commissioner pursuant to Article 2.02(8) of this Title.

(e) The creditor will have no liability under this section if within (60) sixty days of actually discovering an error in compliance with the required disclosures as set forth under Article 15.06, Article 15.06A and Article 15.06B of this Title, the error is actually corrected as to those persons who received the written solicitation and notification of the error is provided in writing to the Consumer Credit Commissioner prior to the complainant's written notice of error.

SECTION 9. This action takes effect on January 1, 1988.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public

necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Parmer and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 741
ON THIRD READING**

Senator Parmer moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 741 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

SENATE BILL 969 ON SECOND READING

Senator Sims moved to suspend the regular order of business to take up for consideration at this time:

S.B. 969, Relating to the repeal of certain provisions of the Texas Clean Air Act [Art. 4477-5, Sec. 3.28(g) and (h)] dealing with operating permits.

The motion prevailed by the following vote: Yeas 22, Nays 8.

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Farabee, Glasgow, Green, Harris, Henderson, Jones, Krier, Leedom, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sims, Uribe, Whitmire, Zaffirini.

Nays: Barrientos, Caperton, Edwards, Johnson, Lyon, Parmer, Tejada, Washington.

Absent-excused: Truan.

The bill was read second time and was passed to engrossment viva voce vote.

RECORD OF VOTE

Senator Johnson asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**MOTION TO PLACE COMMITTEE SUBSTITUTE
SENATE BILL 707 ON SECOND READING**

Senator Harris moved to suspend the the regular order of business to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 707, Relating to exempting from the franchise tax certain corporations whose only business in this state is the solicitation of orders at trade shows.

On motion of Senator Harris and by unanimous consent, the motion to suspend the regular order to consider C.S.S.B. 707 was withdrawn.

MESSAGE FROM THE HOUSE

House Chamber
May 15, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 66, Creating a special interim committee to study the state's role in preserving publically-owned buildings of historical significance.

H.C.R. 96, Expressing opposition to federal preemption of state regulation of wastes generated by oil and gas exploration and production.

H.C.R. 107, Creating the Special Committee on Post-Secondary Medical and Allied Health Education.

H.C.R. 148, Creating the Task Force on Affordable Housing.

H.C.R. 149, Mandating the Coordinating Board to actively enforce and monitor the provisions of the Equal Educational Opportunity Plan for Higher Education.

H.C.R. 173, Granting the Atchison, Topeka & Santa Fe Railway Co. permission to sue the State of Texas and the State Department of Highways and Public Transportation.

S.C.R. 101, Requesting the Texas Department on Aging to prepare an analysis and report on the effectiveness of the projects relating to programs for the elderly.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

**COMMITTEE SUBSTITUTE SENATE BILL 1273
ON SECOND READING**

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1273, Permitting governmental units to issue obligations to fund self-insurance and to form or become members of risk retention groups.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 1273
ON THIRD READING**

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1273** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

**COMMITTEE SUBSTITUTE HOUSE BILL 344
ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 344, Relating to indigent health care.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE HOUSE BILL 344
ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 344** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE HOUSE BILL 734
ON SECOND READING**

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 734, Relating to the creation, administration, powers, duties, financing, and bond authority of the Texas Water Resources Finance Authority and to the sale to the authority of certain bonds.

The bill was read second time.

Senator Jones offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 734** by deleting all of subparagraph (i) on line 60, page 8, of the printed bill.

The amendment was read and was adopted viva voce vote.

Senator Jones offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 734** in Section 1 by inserting the following new Section 20.111 and renumbering the existing 20.111 and subsequent sections:

Sec. 20.111. **BOND REVIEW BOARD.** Bonds may not be issued under this section unless the issuance has been reviewed and approved by the bond review board. The bond review board is composed of:

- (1) the governor;
- (2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the state treasurer; and

(5) the comptroller of public accounts.

The governor is chairman of the review board. The bond review board may adopt rules governing application for review, the review process, and reporting requirements. A member of the bond review board may not be held liable for damages resulting from the performance of the members' functions under this section.

The amendment was read and was adopted viva voce vote.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 734 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 734 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

HOUSE BILL 2022 ON SECOND READING

On motion of Senator Anderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2022, Relating to the imposition of certain fees and taxes on insurers and health maintenance organizations.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2022 ON THIRD READING

Senator Anderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2022** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 169 ON SECOND READING

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 169, Relating to immunity for the reporting of child abuse.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 169 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 169 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE HOUSE BILL 1718
ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1718, Relating to exempting from the franchise tax certain corporations.

The bill was read second time.

Senator Krier offered the following amendment to the bill:

Amend C.S.H.B. 1718 by striking Subdivision (2) of the proposed Section 171.084(a), Tax Code, and substituting the following:

(2) the solicitation of orders is conducted on an occasional basis at trade shows:

(A) promoted by wholesale centers;

(B) promoted by nonprofit trade or professional associations for the purpose of facilitating the solicitation of orders from members of the trade or profession; or

(C) held at municipally owned or county-owned convention centers or meeting facilities.

The amendment was read and was adopted viva voce vote.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE HOUSE BILL 1718
ON THIRD READING**

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 1718 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1504 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1504, Relating to the sale of real property under a power of sale conferred by a contract lien.

The bill was read second time.

Senator Zaffirini offered the following committee amendment to the bill:

Amend **H.B. 1504** on line 11 of Page 2 by striking the word "occur" and substituting in lieu thereof the word "begin".

The committee amendment was read and was adopted.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1504 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1504** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE HOUSE BILL 699
ON SECOND READING**

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 699, Relating to the appointment, qualification, powers, and duties of the State Auditor.

The bill was read second time.

Senator Jones offered the following amendment to the bill:

Amend **C.S.H.B. 699** by striking SECTION 9 and substituting in lieu thereof the following:

SECTION 9. Section 321.016, Government Code, is amended to read as follows:

Sec. 321.016. **IMPROPER PRACTICES AND ILLEGAL TRANSACTIONS.** (a) If in the course of an audit the State Auditor finds evidence of improper practices of financial administration, ~~[incompetent personnel, or]~~ inadequate fiscal records, uneconomical use of resources, or ineffective program performance, the State Auditor, after consulting with the head of the agency, shall immediately report the evidence to the governor, the committee, and the administrative head and the chairman of the governing body of the affected department.

(b) If in the course of an audit the State Auditor finds evidence of an illegal transaction, the State Auditor, after consulting with the head of the agency, shall immediately report the transaction to the governor, the committee, and the appropriate legal authority [attorney general].

(c) Immediately after the committee receives a report from the State Auditor alleging improper practices of financial administration, uneconomical use of resources, or ineffective program performance [incompetent personnel or inadequate records], the committee shall review the report and shall consult with and may hold hearings with the administrative head and the chairman of the governing body of the affected department regarding the report [incompetent personnel or inadequate records].

(d) [After the hearings the committee shall report to the head of the affected department and request the removal or replacement of any incompetent personnel or the installation of any necessary fiscal records].

[(e)] If the administrative head or the governing body of the affected department refuses to make the changes recommended by the committee at the hearing or provide any additional information or reports requested [refuses to remedy the incompetency or to install the proper fiscal records], the committee shall report the refusal to the legislature.

The amendment was read and was adopted viva voce vote.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 699 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 699 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed viva voce vote.

SENATE BILL 249 ON SECOND READING

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 249, Relating to service on a jury by a deaf person.

The bill was read second time and was passed to engrossment viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 1286 ON SECOND READING

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1286, Relating to the qualifications of school bus drivers for hearing impaired students.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE HOUSE BILL 908
ON SECOND READING**

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 908, Relating to regulations of certain motor carriers; providing civil and criminal penalties.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE HOUSE BILL 908
ON THIRD READING**

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 908 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Truan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Truan.

MEMORIAL RESOLUTIONS

S.R. 541 - By Anderson: Memorial resolution for Kimberly Lynn Jones.

S.R. 542 - By Anderson: Memorial resolution for the Honorable Wayne Mobley.

CONGRATULATORY RESOLUTIONS

S.R. 539 - By Armbrister: Extending birthday greetings to Pascual Salazar.

S.R. 540 - By Anderson: Recognizing June 20, 1987, as Texas Blueberry Festival Day and recognizing the community of Hooks as the Blueberry Capital of Texas.

S.R. 543 - By Whitmire: Extending congratulations to Jay Ronald Aldis.

ADJOURNMENT

On motion of Senator Brooks, the Senate at 12:14 p.m. adjourned in loving memory of Sam R. Johnson of Plano, father of State Representative Sam Johnson, until 11:00 a.m. Monday, May 18, 1987.

APPENDIX

Signed by Governor
(May 14, 1987)

H.B. 878 (Effective September 1, 1987)

H.B. 426 (Effective August 31, 1987)

H.B. 720 (Effective September 1, 1987)

H.B. 37 (Effective September 1, 1987)

H.B. 36 (Effective September 1, 1987)

H.B. 1909 (Effective immediately)

H.B. 2513 (Effective immediately)

S.B. 565 (Effective August 31, 1987)

Sent to Governor
(May 15, 1987)

S.C.R. 23	S.B. 537
S.C.R. 57	S.B. 659
S.C.R. 118	S.B. 661
S.B. 43	S.B. 715
S.B. 217	S.B. 861
S.B. 333	S.B. 862
S.B. 340	S.B. 879
S.B. 367	S.B. 892
S.B. 373	S.B. 896
S.B. 410	S.B. 916
S.B. 440	S.B. 953
S.B. 485	S.B. 1021
S.B. 496	S.B. 1111
S.B. 505	S.B. 1301
S.B. 524	S.B. 1313
S.B. 526	S.B. 1333
S.B. 536	S.B. 1428

FIFTY-NINTH DAY

(Monday, May 18, 1987)

The Senate met at 11:00 a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Washington, Whitmire, Zaffirini.

Absent-excused: Truan, Uribe.

A quorum was announced present.

Mr. Drek Moore, a student at the Dallas Theological Seminary, son-in-law to Senator Leedom, offered the invocation as follows:

Heavenly Father, it is hard for us to understand how the powers that be are ordained by God, but on the authority of Your Word, we believe it is so. We come now to ask You to endow Your servants and our representatives with wisdom to know the right, both in matters of fiscal responsibility and morality.

Then, O Lord, with wisdom to know the right, give courage to do the right and withstand any pressures that would compromise their consciences.

Finally, we avow again that we rely not on mere human wisdom or ability but in God we trust.

We ask these things in the name of Jesus Christ our Lord. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of Friday, May 15, 1987, was dispensed with and the Journal was approved.